

DOCUMENT RESUME

ED 355 633

EA 024 732

AUTHOR Baldwin, Grover H.
TITLE School Site Management and School Restructuring.
NOLPE Monograph Series, No. 47.
INSTITUTION National Organization on Legal Problems of Education,
Topeka, Kans.
REPORT NO ISBN-1-56534-055-8
PUB DATE 93
NOTE 95p.
AVAILABLE FROM National Organization on Legal Problems of Education,
Southwest Plaza, Suite 223, S.W. 29th, Topeka, KS
66614.
PUB TYPE Guides - Non-Classroom Use (055) -- Reports -
Evaluative/Feasibility (142)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Administrator Role; *Advisory Committees; Elementary
Secondary Education; *Legal Problems; *Legal
Responsibility; *School Based Management; *School
Law; School Restructuring; *State School District
Relationship; Teacher Role

ABSTRACT

Included in calls for change during the school reform of the 1980s were demands that teachers be given more control over education in the classroom. Such calls have led to the propagation of changes in the schools that allow teachers to take the lead in education, with school management being left to administrators. These changes create legal questions about the roles of school boards, administrators, and states in governing schools, management prerogatives, and the role of parents in education. This report addresses school-site management and newer reform issues, reviews important court decisions, and projects future areas of legal concern to teachers and administrators. Because education is a state responsibility, local school districts must obtain permission from the state to develop school-site management plans. In addition, local school boards may not, without the permission of the state legislature, give administrators or school boards unlimited authority to run schools. However, school boards are the arbiters of disputes over control of school reform and represent the community. Following an introduction, the monograph's five core chapters focus on educational governance and school-site management, school-site management and school-restructuring issues, administrators and restructuring efforts, professional staff and restructuring efforts, and student rights and school choice. Conclusions and implications are offered in a final chapter. A table of cases is included. (Contains 25 references.) (JPT)

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School Site Management and School Restructuring

Grover H. Baldwin

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NOLPE

No. 47 in the NOLPE Monograph Series

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SCHOOL SITE MANAGEMENT AND SCHOOL RESTRUCTURING

Grover H. Baldwin

Professor and Chair

Department of Educational Leadership

The University of Toledo



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NATIONAL ORGANIZATION ON LEGAL PROBLEMS OF EDUCATION

ISBN 1-56534-055-8

Published by

NATIONAL ORGANIZATION ON LEGAL PROBLEMS OF EDUCATION

3601 S.W. 29th Street, Suite 223

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CHAPTER I

INTRODUCTION

Since the taxpayer revolts of the mid-1970's, there have been persistent calls for the restructuring of schools including plans for school site management.¹ With the critical examination of education during the first and second wave of educational reform in the 1980's, school officials again sought to make changes in education. Within these calls for reform and restructure were the demands to permit the classroom professional greater control in providing for the proper education of the students under their care.² Such calls have led to the propagation of changes in schools that allow the teaching staff to take the leadership of educational programs and leave the management side to the school administrators. These efforts have expanded with the restructuring plans in major city school districts — Chicago, Jefferson County, Miami-Dade County, Rochester, N.Y., Los Angeles, and Hammond, Indiana.³ Such changes have caught the eye of leaders at the federal and state level and are seen as the "third wave" of educational reform.⁴

These reform attempts raise some very interesting legal issues in many areas of governance and the roles of parents and community in the schooling of children. Specifically, what do these emerging relationships say to the role of school boards, central and building administration, the role of the states in governing the schools, to the traditional prerogatives of management, and the roles of parents in the schooling of their children and to conflicts that arise from these areas. This monograph addresses these areas, reviews court decisions that affect these areas, and projects future areas of concern with which both teachers and management must contend.

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1. S. Weinstein & D. E. Mitchell, *PUBLIC TESTIMONY ON PUBLIC SCHOOLS*. (National Committee for Citizens in Education, 1975).
 2. G. I. Maeroff, *THE EMPOWERMENT OF TEACHERS: OVERCOMING THE CRISIS OF CONFIDENCE* (1988); S. B. Bacharach & J. B. Shedd, *Power and Empowerment: The Constraining Myths and Emerging Structures of Teacher Unionism in an Age of Reform*, in J. Hannaway & R. Crowson, *THE POLITICS OF REFORMING SCHOOL ADMINISTRATION* (1989).
 3. T. Timar, *The Politics of School Restructuring* in D. M. Mitchell & M. E. Goertz, *EDUCATION POLITICS FOR A NEW CENTURY* (1990).
 4. J. Murphy, *Educational Reform in the 1980's: Explaining Some Surprising Success*, *EDUCATIONAL EVALUATION AND POLICY ANALYSIS* (1989).

Restructuring and Structural Reform

Restructuring is a term bandied about today within society. It means various things to different groups, with no standard definition, save that change is bound up in the act of restructuring. Drawing upon the works of Elmore⁵ and Plank,⁶ one can construct a working definition of restructuring and structural change for this monograph. The latter term is significant as it provides the basis for categorizing the reforms of the 1980's as they effect governance, personnel and collective negotiations issues, the role of administrators, and the role of parents and community members in the operation of the schools.

Restructuring, as seen by Elmore and his associates,⁷ calls for three basic changes in the operation of schools. First, there is the reforming of the core technology of schools. This comes close to the conception of "empowerment" of classroom teachers as set forth by Maeroff.⁸ The second set of changes that needs to occur within the education of students and within schools is the restructuring of the conditions of work for teachers within the system. The third model is a restructuring in the relationship between the school and the clientele it serves, including students, parents, and the community at large including issues of control of the decision making and policy formation part of the school operation.

With this base, the concern is with the restructuring of schools as it calls for changes in the decision-making process within schools and school districts (for administrators and teachers). Another concern is with the notion of restructuring schools that calls for changes in the level of involvement and "power" of local school advisory councils to make decisions. Lastly, it must be recognized that restructuring calls for changes in the role and responsibilities of the local school board of education, central administration, local school administrators, professionals in the schools, and parents and the business community.

Yet, with the strident calls for restructuring, the state legislatures have entered the educational scene, have responded to community, global and local business demands, and have undertaken new roles and responsibilities, and shifted the roles and responsibilities of the local school district. As Cohen indicates, a bandwagon for struc-

5. R. Elmore, *RESTRUCTURING SCHOOLS: THE NEXT GENERATION OF EDUCATIONAL REFORM* (1990).

6. D. Plank, *Why School Reform Doesn't Change Schools: Political and Organization Perspectives*, in W. Boyd & C. Kerchner, *THE POLITICS OF EXCELLENCE AND CHOICE IN EDUCATION* (1988).

7. Elmore, *supra* note 5.

8. Maeroff, *supra* note 2.

turing schools is slowly taking shape.⁹ The view from the states is that the essence of restructuring involves altering the authority and accountability structures commonly used in education. The state legislatures and governors are willing to trade off increased decision-making authority being granted to the local school districts in return for greater accountability and significant improvement in student performance using an outcomes based approach. Performance based accountability is fast becoming the norm in the restructured schools, and in return the local schools have the authority to "do what is needed" to get the job done to the satisfaction of the state legislature. There are critical issues bound up in these challenges and school districts are responding in a variety of ways. Cohen cites two key assumptions for the critical issues that face school restructuring.

First is the assumption that the primary rationale for restructuring schools lies in the need to improve the productivity of the education system in general, and, in particular, student acquisition of higher-order thinking skills The second assumption is that improving educational productivity requires a restructuring of the entire educational system and not just the schools. The structure and process of governance and control at the state and local levels must be readjusted to accommodate and support necessary changes in the organization and management of instruction of schools and classrooms.¹⁰

To accomplish these tasks, there are several school and state level issues that must be addressed. At the school level, these issues include the establishment of educational goals, the structure of knowledge, the instructional tasks and activities to be used, the instructional group size and composition, personnel hired and the process of evaluation, the amount of instruction time, and the accountability system to be used. At the school district level, these changes call for a reorientation of school boards and central office administration towards a performance base rather than a procedure base. This includes the necessity of the local school district administrators to "give up" some policy making responsibilities to the individual schools so that, in accordance with specific guidelines, those at the local level control performance and the procedures needed to achieve these goals. Shared decision making with the local school,

9. M. Cohen, *Key Issues Confronting State Policymakers*, in R. Elmore, *RESTRUCTURING SCHOOLS: THE NEXT GENERATION OF EDUCATIONAL REFORM* (1990).

10. *Id.* at 258-259.

balancing centralized control and local autonomy, greater discretion at the local school level and broader participation by all stakeholders involved, must be recognized, planned for, and implemented.

These challenges and opportunities are all linked to the approach taken by the state-level agencies for education, including the legislature. During the 1970's and 80's, a great disillusionment seemed to occur at the state level. The sense that the local school districts, much less the local individual school, actually knew enough to achieve desired goals, led to the legislatures and state departments of education taking over the decision making role and mandating changes and programs they viewed as needed for the solution of educational ills. Cohen, believes that such approaches have failed and that the state authorities must change their strategies if meaningful restructuring is to occur. Such action on the part of the states must take three forms. First, the state (working in concert with affected parties) must set educational goals.¹¹ To some degree this has been accomplished by the National Governors Conference and the America 2000 plan for educational achievement and the New American School Development Corporation. However, states must adopt, adapt, and translate these national goals into state level goals and then devise appropriate assessment measures for their attainment. Second, the states, as the center of legitimate educational authority, must provide the stimulus for educational innovation at the local level. This means:

- * Articulating a vision of restructured schools,
- * Encouraging local experimentation with various forms of school organization,
- * Reducing unnecessary administrative and regulatory barriers to experimentation with promising approaches,
- * Providing ongoing implementation support and technical assistance to schools and districts trying new approaches,
- * Linking rewards and sanctions for schools to their performance,
- * Researching and disseminating results to other schools.¹²

For instance, such reform/restructuring efforts have been undertaken in many states to alleviate the bureaucratic and administrative complexities that face school organizations that wish to change. The state of Indiana provides an example of what one late arrival on the educational restructuring scene is now trying to accomplish.

In the 1991 Legislative session, the Indiana 2000 program was passed. It was a successor to the A+ program that sought to improve

11. *Id.* at 276.

12. *Id.* at 278.

schools, complete with performance based accreditation and performance based awards of real dollars to the schools. However, the dollars ran out and some new initiative was needed to keep reform alive, hence, the Indiana 2000 schools. There was also the bandwagon approach of the Secretary of Education, H. Dean Evans, who piggy-backed on the America 2000 plan for political importance. This is not to say that the program is any more or less flawed than any other approach at quick fix in education.

The new section of the education code allows that:

The board shall permit school corporations to establish an Indiana 2000 school restructuring program that authorizes a designated school or designated schools to exercise expanded management authority within their respective school corporations and permits the school corporations, on behalf of the schools, to do the following:

(1) Invoke a waiver of any rule adopted by the Board (except a rule adopted under this section)

(2) Develop a plan for the admission of students to the school who do not reside in the school's attendance area but who have legal settlement within the school corporation.

(b) In approving school corporations under this section, the board shall consider whether the school corporations have adopted the six (6) national education goals adopted by the national governor's association in February 1990, established a community-wide strategy for achieving the national goals, demonstrated the school corporation's readiness to support experimental schools (commonly referred to as "New American Schools"), and demonstrated support for participation under this section, including the support of the exclusive representative.

(c) The board may designate a single schools more than one (1) school, or every school within a particular school corporation to participate under this section.

(d) The board may waive any statute relating to curriculum and textbook selection on behalf of a school or school corporation participating under this section.

- (e) Funds available for innovative school improvements . . . may be expended to fund school restructuring programs described under this section.¹³

The Indiana State Legislature then chose not to fund the initiative for Indiana 2000, but allowed the State Board to utilize funds from the 21st century discovery schools program operating in six Indiana schools for Indiana 2000. The total appropriation for the latter program was \$850,000.00 per year.

Using Cohen's notions as a base, and the Indiana 2000 project as one attempt at implementation, what problems and issues are raised for the areas of governance and middle management personnel for efforts at restructuring? One of the contentious issues in American education has been the provision for the best education of each and every school child. This battle has been fought since colonial times and sees renewed emphasis with the educational reform movement. The issue involves many aspects of education, but the lasting concern is that of who should really control the educational process of the students?

School Site Management

In the early history of American education, the township selectmen controlled the process of education and provided for the educational needs of the students within the community. There was a great deal of input from the local community through close ties to the board of selectmen, the selection of the teacher, and the use of the school as a center of social activity for the community. As education became more complex, this closeness died out and was overtaken by the need for greater control and consistency by the state via statutes, rules, and regulations. These efforts led to the empowerment of state agencies and the delegation of specific roles and responsibilities for the local school boards. In addition, a separation grew through consolidation of schools and the professionalization of the educational establishment. Further, as school facilities were moved outside the immediate community to relatively inaccessible places that were not conducive to their use as community meeting centers. These aspects of life that were fostered during the first three-fourths of the 20th century created problems within the local community and led to dissatisfaction with education as the level of achievement of students steadily declined and the level of services for minority, handicapped, gifted, and "nor-

13. IND. CODE ANN. § 20-1-1-6.3 (Burns 1991).

mal" individuals fell into disrepute. This situation led to the new demands for educational excellence for all students.

As an outgrowth of the desegregation movement and other concerns of parents and community members, the demand for return of control of education to the community grew during the 1960's. Community schools, with local community school boards within the metropolitan centers, became a means to return some vestige of control to the community or at least to quell the demands of community members. In December, 1968, the Conference on Community Schools examined the place, role, problems, and promises of community schools within the education of students. The conference report shows that the issues of decision-making, organization and financing, formation of local boards, the roles of the various participants in the education process, were the concerns addressed at that time with specific suggestions and directions to be effected if community schools were to be successful.¹⁴

While the 1968 conference dealt with the various aspects of community schools, and led the way to the notion of local control of education, the esoteric commentary failed to ignite the local community and local professionals who were bound up in the growing legal concerns of declining test scores, growing militancy of teachers associations, and the general demise of education. In 1974, a turning point came in the community school/school site management efforts with the public hearings by the Commission on Educational Governance of the National Committee for Citizens in Education. Fostering the belief that citizens should play an active part in the process of the education of their children, the Commission held hearings and gathered testimony from lay and professional people alike as to what could be done to revitalize education at the local level. Prominently mentioned in the hearings, and in the report, was the notion of school site management.¹⁵ The idea that the local community of individual schools, in concert with the principal and professional staff, should make decisions regarding the use of personnel of the school, the use of funds for the instructional program, the type of instructional program, the evaluation of personnel, and, be active within the collective negotiations at the local school level, were items that focused attention on the local school communities effort to regain control of the education. A similar call for school site councils of parents and community members is gaining strength in the current reform movement

14. H. M. Levin, *COMMUNITY CONTROL OF SCHOOLS* (1970).

15. S. Weinstein & D. E. Mitchell, *supra* note 1.

in education. In addition, while focusing on major metropolitan areas, the testimony before the Commission, called for the use of school site management for all schools in each and every school district as a means of providing quality education, with the attendant control and accountability, demanded by the local community.

School site management did not "catch on" as rapidly as was hoped. A review of the literature dealing with school site management reveals little indication of its use or prominence within the educational community. Efforts were made to affect such efforts within districts and some quite prominent. Yet, these initiatives did not approach the totality hoped for by the NCCE Commission or those involved within the earlier community schools movement. School site management turned to some very specific, and easily made, changes — that of school site budgeting and, through this it was hoped, the overall change in decision-making structure in education.¹⁶ Some of the reasons for this lack of acceptance of school site management were the feeling of being overwhelmed by the educational establishment and being locked out of control of declining resources, declining students, declining achievement, growing costs of education, and an aging and stable professional staff. These seemingly insurmountable issues, combined with the growth of teacher militancy, led to a change in focus by the local community.

The 1980's has seen a change in the perception of the local community and a unwillingness to let the educational establishment dictate what happens in the schools. This latter point has seen the rise of home school and private school movement in response to parental demands for control of education of their children. As a result of the educational reform movement and the plethora of opinion that bombard local citizens concerning the schools, the educational establishment is finding increased attention by the local community. This development is now combined with a loss of faith in the educational establishment to fulfill the demands of the community and the needs of the students. At a time when this local outcry is increasing, the states through the legislatures, state boards, and state departments of education, are reacting by mandating various educational reforms and allowing local school districts to fulfill these mandates and move to different organization and governance patterns.

As a result of the excellence in education movement, there are renewed calls for school site management. These calls would place

16. L. C. Pierce, *SCHOOL SITE MANAGEMENT* (1977); See e.g., W. I. Garms, J. W. Guthrie, & L. C. Pierce, *SCHOOL FINANCE: THE ECONOMICS AND POLITICS OF PUBLIC EDUCATION* (1978).

the principal, or head teacher, in charge of the school as the instructional leader. This individual would be charged with the responsibility for providing greater opportunities for local control of the individual school programs and staffing and budgeting process. Most notably, efforts have been made under the rubric of school improvement projects, in Rochester, New York, Miami-Dade County, Florida, and Hammond, Indiana. In these district, efforts have received support from the various participants within the process — parents and community members, teachers, and principals. These efforts come on the heels of the overall effort of the teacher empowerment movement that would permit greater professional staff judgment to be exerted in the affairs of operating the schools. Indeed, Guthrie sees the renewed emphasis on school site management as the “next needed education reform.”¹⁷

With the renewed emphasis on local control of education, and the growing concern on the part of the state legislatures for control and accountability of education and the monies attached to it, the area is fraught with legal issues and concerns for those who would move in this direction. While school site management provides for individual school decision-making in the areas of budget, curriculum and instruction, personnel, and an accountability responsibility,¹⁸ the legal issues and concerns for those desiring to move in the direction of school site management raise several concerns. These concerns make up the body of this monograph. The issues dealt with are educational governance, school site management issues, administrative roles under school site management, professional staff roles and the effect of school site management and restructured schools, parent and student roles in restructured schools, and the issues of choice, home schools, and vouchers as ideas emanating from restructured schools.

17. J. W. Guthrie, *School-based Management: The Next Needed Education Reform*, 67 *PHI DELTA KAPPAN* 305 (1986).

18. L. C. Pierce, *supra* note 16.

CHAPTER II

EDUCATIONAL GOVERNANCE AND SCHOOL SITE MANAGEMENT

In the realm of educational governance, there are four subcategories of concerns that are affected by school site management. These are state legislative power, local school board's powers and responsibilities, delegation of authority and responsibility, and parental representation/control within the local school advisory council.

State Legislative Power

Through state constitutions, the legislatures have been granted plenary power over the control of education within the states.¹ This power includes the responsibility to establish and maintain a system of common schools (either free public or public), raise tax monies, and to govern, control, and regulate the schools and the common education experience. It is well settled that education is a function of the state, is a governmental function, and is one that must be controlled by the state.² The state legislatures have granted the state board of education power to establish goals for the educational system of the state, assess the attainment of these goals, assure compliance with the rules and regulations promulgated in the responsibility of providing education for students in the state, and to make recommendations to the legislature executive branches of the state government, as appropriate, for the operation and maintenance of the schools.³ To fulfill the responsibility of establishing and maintaining the education system in the state, the state board delegates to the state department of education such powers and responsibility, as provided by statute, to establish and enforce the rules and regulations necessary to have local education agencies comply with the broader programs

1. See e.g., Ohio Const., art. VI § 2.

2. *Jeffries v. Columbia Graded Common Sch.*, 122 S.W. 813 (S.C. 1909); *Minneapolis Bd. of Educ. v. Houghton*, 233 N.W. 834 (Minn. 1930); *Fawcett v. Hall*, 251 P. 679 (Cal. Ct. App. 1926); *Ferguson v. Academy Consol. Indep. Sch. Dist.*, 14 S.W.2d 1051 (1929); *Piper v. Big Pine Sch. Dist.*, 226 P. 926 (Cal. 1924); *Lair v. Grant*, 244 N.Y.S. 427 (Sup. Ct. 1929).

3. See e.g., IND. CODE ANN. § 20-1-1-7 (Burns 1991).

established by the state board and the legislature.⁴ Within the framework of the state legislature and the appropriate state agencies, there is no specific direction provided for the operation of school site management programs. School site management can be used as long as the local education agencies fulfill the basic requirements of operation and maintenance of a sound, thorough, and efficient system of education. Thus, it falls to the local school board, and the subsequent delegation of responsibility to the local administration and professional staff, to devise whatever appropriate educational system they deem necessary to operate the school system.

Local School Boards

But to what lengths may the local school board go to establish what it believes to be the appropriate means of operating the school system? What boundaries does it have in managing the school system and providing for the education of students? May it establish a school site management program and delegate the decision-making powers to the local building principals, and the faculty and school advisory councils that are called for under school site management?

Simply put, the answer is that the local school board does have the authority to make these changes and can, with proper guidelines and specificity as to accountability and limits, permit school site management to operate within the confines of the school system. Yet, most state statutes or constitutions require uniformity of school systems across the state. Is there a conflict here? Again the answer appears to be that there is no conflict. By statute and constitution, states have provided that the school systems must be uniform, but not that they be identical. However, such an approach does open the door to charges of inequity/inequality in the education of students and must be guarded against by the local boards and by the state. It appears that the operation of local school districts, and individual schools, is at the discretion of the local school board and administration, as long as the basic tenets and requirements of the state legislature and state board are met.

Just what control does the local board have in the operation of the schools and to what lengths may they go to manage and operate the local district? In a 1943 case, the District Court of Appeals in California noted the limits of the modern board of education.⁵ In a

4. See e.g., IND. CODE ANN. § 2-1-1.5-5 (Burns 1991); KAN. SCH. CODE, § 72-75115-15 (Vernon 1991).

5. *Phelps v. Prussia*, 141 P.2d 440 (Cal. Ct. App. 1943).

situation where a teacher was dismissed (forced to retire) under the school code, but the city charter provided for continued employment, the teacher sued for reinstatement. The court, noting the power and duties of the local school board, indicated that the control of school matters was placed by the state constitution in the hands of the legislature.

Where the legislature delegated the local functions of the school system to local board, districts, or municipalities, it does so, always, with its constitutional power and responsibility for ultimate control for the common welfare in reserve.⁶

There are limits beyond which the local school board must not go. These typically fall within the statutory and constitutional restrictions and guarantees provided for the protection of individuals. Thus, the teacher who was dismissed without a proper due process hearing as called for by the tenure law, found that the court upheld the teacher's right to employment. In admonishing the school board for overstepping its bounds, the court said in *Appler v. Mountain Pine School District*:

The school board is the representative of the people and should have wide latitude and discretion in the operation of the school district, including hiring and rehiring practices. Such local autonomy must be maintained to allow continued democratic control of education as a state function, but is subject only to clearly enunciated legal and constitutional restrictions.⁷

The question of the amount of discretion that the local school board has in operating the schools is thus an area of concern for those boards considering school site management. In speaking to the discretion school boards have, while maintaining the rights of individuals within the schools, the court stated in *Russo v. Central School District #1*:

... [B]oards of education retain substantial discretion in controlling the educational process in their schools. Reasonable regulations designed to effect legitimate purposes, are well within the Board's power, and will be upheld against challenge.⁸

6. *Id.* at 444.

7. 342 F. Supp. 1131, 1137 (W.D. Ark. 1972).

8. 469 F.2d 623 (2d Cir. 1972).

Again, the limits are those legitimate ends that the board would effect in the schools, and those must be purposeful and within the demands of the state legislature and state board.

The next aspect of the issue of powers of the local board arises in just what is mandatory and what is permissive in terms of its policy-making responsibilities. This is further complicated by the question of just what is an "adequate education". On the question of mandatory and permissive aspects of local school board operation, a definitive answer can be found in *Hedges v. Department of Social Services*.⁹ In examining the issue of statutory language and its application and also the use of administrative regulations and the power of the administrators, the Missouri Court of Appeals held:

With respect to whether a statutory requirement (and by analogy a requirement created by an administrative regulation) is mandatory or merely directory, the general rule has been stated frequently that where the statute provides what result shall follow a failure to comply with its terms, it is mandatory and must be obeyed, whereas, if it merely requires certain things to be done and nowhere prescribes the result that shall follow if such things are not done, the statute is merely directory.¹⁰

In dealing with the issue of "adequate education", guidance is provided by the famous *Kalamazoo* case of 1874 and the 1981 *McDaniel* decision in Georgia.¹¹ In both instances the local school districts went beyond what was perceived to be their limits of power in providing for the education of the students. As the Georgia Supreme Court expressed in *McDaniel*:

... "adequate education" provisions of the state constitution do not restrict local school districts from doing what they can to improve educational opportunities within the district, not do they require the state to equalize educational opportunity between district.¹²

Thus, as long as the district is fulfilling legitimate educational purposes, is within the civil, statutory, and constitutional restrictions, is meeting the mandatory obligations placed upon it by the state in pro-

9. 585 S.W.2d 170 (Mo. Ct. App. 1979).

10. *Id.* at 172.

11. *Stuart v. School Dist. No. 1 of Kalamazoo*, 30 Mich. 69 (1874); *McDaniel v. Thomas*, 285 S.E.2d 156 (Ga. 1981).

12. *Id.* at 164.

viding for the education of individual students, then it appears that the local school boards are free to expand the mode, style, operation and establishment of educational offering, programs, and delivery systems to conform with what it believes is appropriate for the local school district and for the individual schools.

In providing an adequate education and fulfilling the mandatory requirements of the state, just what power and lengths can a local school board go in providing for the educational program? While the following cases do not deal directly with school site management, the issues with which the courts dealt concern the areas of budget, curriculum and instruction and personnel decisions that are contained in school site management proposals.

In the area of the operation of the schools, including the curricular and instructional offerings and the organization of the schools, courts have held for boards in their efforts to provide for that meaningful, and adequate, education. In *Linnens v. Christensen*, the board altered the school organization and patrons claimed a violation of the statutes.¹³ The court upheld the changes stating that:

The common thread running through the statutes, regulations, and court opinions seems to be the tendency to afford the local school boards as free a hand as possible in the operation and organization of their individual educational systems. Each school board should be allowed to adapt its system to the peculiar situations existing in its districts. Grass roots supervision of education is a historical element of our society and was within the contemplation of [the statutes]. In deciding the instant case, we are conscious of, and guided by, this principle of local autonomy.¹⁴

The issue of non-delegable responsibilities raising the specter of managerial prerogatives, was the issue in the 1987 ruling that saw the Board of Education of Yonkers action sustained when the Federation of Teachers sought to have the arbitrators order stand regarding the use of combined classes within the school district.¹⁵ Likewise, in *Pratt v. Independent School District #831*, the issue of curricular offerings in the school district, where the board removed the film

13. 646 P.2d 1141 (Kan. Ct. App. 1982).

14. *Id.* at 1147.

15. Board of Educ. of Yonkers City Sch. Dist. v. Yonkers Fed'n of Teachers, 514 N.Y.S.2d 465 (App. Div. 1987).

"The Lottery" from the curriculum, the Eighth Circuit, while cognizant of the students First Amendment rights, held that:

Local authorities are the principal policymakers for the public schools. Thus, school boards are afforded comprehensive powers and substantial discretion to discharge the important tasks entrusted to them. . . . Necessarily included within the board's discretion is that authority to determine the curriculum that is most suitable for students and the teaching methods that are to be employed, including the educational tools to be used.¹⁶

Personnel management, transfers, assignment, and reduction in force are issues that may well arise within the operation of school site management programs. The courts have generally held that the substantive issues bound up in the policy-making process are the province of the school board alone and need not be bargained. However, the procedural issues of how the changes will be implemented may well be matters for negotiations as they affect hours, wages, and terms and conditions of employment.¹⁷ These issues are complicated by the local school board's requirement to provide for the education of the students as it sees fit within the context of statutory requirements and rules and regulations of the state board.

In personnel issues, the *Peters v. South Kitsap School District #402* case saw the Washington Court of Appeals deal with the "bumping" requirement in reduction in force within the context of the school board's authority to plan for the operation of the district.¹⁸ Holding for the school board in eliminating the position and the laying off of an individual, the court stated:

The determination of educational goals, programs, and curriculum is a matter within the broad discretion of the school board. The exercise of this discretion establishes the districts needs for the coming school year. In our view, the law does not require the school board to consider the availability of teachers with specific qualifications in establishing the districts goals or requirements. The efficient use of combinations of teaching skills into teaching assignments is within the broad discretionary power of the

16. 670 F.2d 771, 775 (8th Cir. 1982).

17. See, G. H. Baldwin, *Management Prerogatives and the Scope of Public Sector Bargaining*, in SCHOOL LAW UPDATE (1986).

18. 509 P.2d 67 (Wash. Ct. App. 1973).

school board. The law requires only the good faith exercise of administrative discretion ¹⁹

Thus, the local school board remains, by its creation, the sole authority responsible for the operation of the schools, answerable only to the state legislature. Yet, the local board cannot actually run the schools and must delegate this responsibility to the local staff. Just what are the limits and what effect do these have on school site management? These issues are also complicated by state legislative actions as well can be seen in Chapter 3.

Delegation of Authority

The question of just how much the local school board may delegate to either the administrative staff of the individual building or the school advisory group under school site management is still unsettled. Part of this answer lies in the decision of the Colorado Supreme Court in its ruling in the *Big Sandy School District v. Carroll*.²⁰ Here the suit was brought by a teacher for alleged breach of contract, without good cause or a hearing. The superintendent had been "authorized" by the school board to contract and employ a "teacher-principal" for the district without formal action by the board, but mere acquiescence on the part of all five board members. Other than limits on salary, no other restrictions were placed on the superintendent in the process. Carroll was hired and discharged the day before classes were to begin. The district court ruled in favor of the teacher, but the Colorado Supreme Court reversed the decision on the basis of the non-delegable duty of the board to hire and employ. By statute, the court found, the board alone had the power to employ and fire and such power could not be delegated to anyone else. In dealing with the question of delegation of authority, the court stated that

. . . the general rule is that a municipal corporation, or a quasi-municipal corporation such as the district, may delegate to subordinate officers and boards powers and functions which are ministerial or administrative in nature, where there is a fixed and certain standard or rule which leaves little or nothing to the judgment or discretion of the subordinate. However, legislative or judicial powers, involving judgment and discretion on the part of the municipal body, which have been vested by statute in a

19. *Id.* at 73.

20. 433 P.2d 325 (Colo. 1967).

municipal corporation may not be delegated unless such as been expressly authorized by the legislature. . . . Some statutes confer on the designated officer or body exclusive power to appoint teachers and other school employees. Such power, when conferred on a particular body, cannot be delegated, and an applicant for appointment is chargeable with knowledge of such fact. Accordingly, the duty of the board to make the selection cannot be delegated to the superintendent, even though the statute makes it obligatory on the board to select teachers from nomination made by him. . . . In short, by statute the school board is empowered to hire teachers and while it may well want to act on the recommendation of its superintendent, it cannot escape this statutory duty by completely shifting the responsibility to its superintendent.²¹

The recognition of this statutory responsibility, and the inability of the board to delegate this to its officers or any committee, including a school advisory council, is paramount to the operation of school site management. Delegation is limited to the implementation of board policies, within the specific guidelines established by the board. The power of an advisory council is to make recommendations concerning policies, hiring and firing, curriculum and instruction, and budgetary concerns only. Where the school board has placed specific dollar amounts into the instructional account, the school advisory council may spend the funds in that account as they deem it best for the education of the students, but they cannot shift funds from other accounts to augment these budgeted funds. Likewise, in establishing the curriculum and course requirements for the school, the advisory council is limited to action consistent with the policies of the board and the requirements of the state.

Superintendents and principals have limitations to their powers. Again, these powers must be specifically delegated, or clearly implied, by the board or the statute. Where a teacher challenged a dismissal for failure to comply with the superintendent's expansion of the board policy requiring a doctor's certificate if the person was ill, a policy that was implemented without formal board approval, the teacher lost.²² The court considered such action an administrative day-to-day function which, even if it had not been specifically delegated, flowed from the policy of the board.

21. *Id.* at 328-329.

22. *Godbey v. Roosevelt Sch. Dist.* No. 66, 638 P.2d 235 (Ariz. Ct. App. 1981).

In establishing rules and regulations and by extension, "establishing" means to implement policy, even principals have some degree of latitude in fulfilling their duties and responsibilities. Some states clearly spell out the administrator's powers and responsibility. In *DeKoevend v. Board of Education of West End School District No. 23*, the Colorado court held that:

The duties of a principal are set forth in [the statutes]. The statutes provide that the principal shall supervise the operation and management of the school, assume administrative responsibility and instructional leadership for the planning, management, operations, and evaluation of the education program, and perform such other duties as may be assigned by the Superintendent. These administrative responsibilities could not be carried out if the principal was unable to promulgate rules and enforce them.²³

From this discussion of powers and responsibilities, it follows that the local school board will need to establish the powers and responsibilities of the school advisory committees, just as it has the powers and responsibilities of the officers and employees of the district. Once these have been established, the school advisory committees can then operate within a delegated framework to advise and recommend changes and implementation rules and regulations necessary for the effective use of school site management.

Local School Advisory Council Powers

While the school board has discretion in determining the types and level of services, curriculum, instruction, and personnel needs for the district, school site management calls for the extensive use of school advisory committees to assist in this decision-making process. These councils, ideally consisting of parents and professional staff members, operate on a local building basis for the purpose of providing guidance and direction to the educational program offered by the individual school. The question then arises, what are the limits of power of these groups? If they are to be effective, and if school site management is to fulfill its objective of local community control, these groups must be provided significant decision-making authority regarding the various aspects of the school program, including budgetary matters, curricular and instructional issues, and personnel

23. 653 P.2d 743, 745 (Colo. Ct. App. 1982).

decisions including both the principal and the staff of the individual building. Yet, these are matters reserved exclusively for the local school board and may not be delegated.

In outlining the powers of the councils, and addressing the concern of control, Marburger indicates that school site management does not call for the removal of the local boards power and responsibility, but that the advisory councils can be delegated the responsibility for implementation of the decisions of the local board and to make internal building level, decisions that are in concert with the overall board action.²⁴ On the one hand the advisory group under school site management may make decisions regarding the various aspects of the educational program; but, it is still an advisory group that is limited to making recommendations that must be approved by the local board. These restrictions also include the professional staff and the principal. While under certain specific rules and guidelines and within certain boundaries, the advisory councils may make local "administrative/operational" decisions as deemed appropriate by the local board, such power is not what is typically thought of by the advisory groups.

One specific case points to the advisory nature of these groups and to the role the local board plays in representing the interests of the people in rendering final decisions on educational matters within the schools. In *Parents Association of Public School 222K v. Community School Board*,²⁵ the question was how much power the parents' association had in both advising the board and forcing the board to accept their recommendation in the hiring of an acting principal for the school. Under the statute of the state of New York, each Community School Board (CSB) had to establish a parents' association or parent-teachers' association and have regular communication with this group on a variety of educational matters, including personnel decisions. In addition, the parents' association claimed that through the CSB's by-laws and the Education Law, they had a consultative role (with the right to reject) in the selection of personnel, including the acting principal. Because they objected to the selection made by the CSB, and that they were not informed of or provided an opportunity to be consulted, they challenged the legality of the decision. In finding for the CSB, the court held that

Except for granting parents' associations the right to have
'full factual information pertaining to matters of pupil

24. C.L. Marburger, *One School at a Time*, in *SCHOOL BASED MANAGEMENT: A PROCESS FOR CHANGE* (1985).

25. 319 N.Y.S.2d 864 (Sup. Ct. 1971).

achievement, . . . reading scores, . . . comparable grades' (and) . . . 'record of achievement' . . . , the Legislature did not give parents' associations any other status or rights in the decentralized school system. . . . The Community School Board cannot be required to divide its statutory authority with the Parents' Association, when it proceeds to: ' . . . appoint, define the duties, assign, promote and discharge all . . . employees.'²⁶

Beyond the question of the authority and decision-making power of the school advisory council, lies the basic question of selection, appointment, or election to the council, a legal issue with which the local school board and the school administration must deal. In the literature concerning school site management, the emphasis is on one of three mechanisms — appointment by administration or board (which is not recommended for charges of favoritism and non-representation), appointment by the local board (with similar charges level against the board), and election.²⁷ Elections fall into three categories: (1) election by parents of the school in an open election with a stated number of individuals receiving the most votes being elected, (2) election through the same open balloting process, but confined to the members of the parent's association, or (3) election by either means listed above but with a percent appointed by those elected. While school site management programs have been established and no specific challenges have been brought concerning the manner in which those individuals on the advisory councils have been elected, the issue of equal and adequate representation is one that must be addressed. One can only surmise that the requirement of "one person, one vote" established in *Baker v. Carr* and applied in the Supreme Court's decision in *Hadley* will have an effect on providing for the representativeness of elected advisory councils.²⁸ Where the local school board or administrative group chooses to use the appointive process, it is that the requirement is not applicable as decided in *Sailor's v. Board of Education of County of Kent*.²⁹ While there is no legal requirement for equal representation across all education, socio-economic, or political

26. *Id.* at 867.

27. T.A. Clark, *Introducing School Site Management: A Framework for Citizen Involvement* in A HANDBOOK FOR PARENTS (1979).

28. *Baker v. Carr*, 369 U.S. 186 (1962); *Hadley v. Junior College Dist. of Metro. Kansas City, Mo.*, 397 U.S. 50 (1970).

29. 387 U.S. 105 (1967).

lines, there are practical reasons for doing so if the appointive school site management advisory councils are to fulfill effectively their function.

What about the use of local school councils with a preponderance of patrons where decisions of policy and procedure are made? This is one arrangement that Cohen deemed necessary if meaningful restructuring of the educational establishment is to be achieved.

The powers and duties of the locally elected school boards of education have been well established. These bodies are quasi-municipal corporations with responsibility to fulfill state mandates.³⁰ This status was recently confirmed in *California Teachers Association v. Juff*, where the court held that the school district was not a distinct and independent body, but an arm of the state which had to adhere to state regulations in the administration of the schools.³¹ This quasi-municipal status has been confirmed and strengthened in a number of cases. In *Jacobs v. Fremont RE-1 School District*, the Colorado Appeals court held that:

[a] school districts is a quasi-municipal corporation whose powers are conferred by the General Assembly . . . and a quasi-municipal corporation may not delegate to subordinate officers legislative or judicial powers involving judgment and discretion, which have been vested by statute in the municipal corporation. . . . they may delegate ministerial or administrative functions when a fixed and certain standard has been established which leaves little or nothing to the discretion or judgment of the subordinates.³²

However, as seen in *Jacobs*, there are limits to the delegation of power and authority that the local school districts may "give away". This notion of the need and authority to delegate performance as well as procedures in the operation of the schools seems to have gained acceptance, however. In *Neis v. Board of Education of Randolph School District*, the Wisconsin court dealt with this question of the degree to which the state could delegate its powers. The court stated that:

The state may delegate various of its powers to school districts in order to accomplish the governmental function of establishing and operating public schools. . . . It is funda-

30. *Big Sandy Sch. Dist.*, 433 P.2d 325 (Colo. 1967).

31. 7 Cal. Rptr. 2d 699 (Cal. Ct. App. 1992).

32. 697 P.2d 414, 415 (Colo. Ct. App. 1984).

mental that these agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds.³³

The limits to school district and local school authority are not settled. Indeed, as the latter half of the 1980's demonstrated, the courts were more lenient in their interpretation of legislative actions that broadened the powers and capability of local school boards to make policy decisions. This change came predominantly through the broad pieces of legislation that were enacted that contained what appears to be a limitless amount of discretion for local school boards. An example can be seen in *Russell County School Board v. Anderson*, where the court in Virginia held that:

No statutory enactment can permissibly take away from a local school board its fundamental powers to supervise its school system. . . . In *Parham*, we wrote that the function of applying local policies, rules and regulations adopted for the management of a teaching staff, is a function of essential and indispensable exercise of the powers of supervision . . . of the schools.³⁴

Indeed, the notion that the local school district and the local school personnel have control over the educational program seems to be well established, even if the schools are agencies of the state whose purpose is to fulfill state policy. Nowhere are these principles seen more clearly than in the various school finance cases that reviewed, and reinforced the powers and responsibilities of the local school district. In *Kukor v. Grover*, the Wisconsin court held that:

The principle of local control in Wisconsin, therefore, is not merely a theoretical notion, but rather is a constitutionally based and protected precept as to which the framers of our constitution were firmly committed. . . . direct control over decision vitally affecting the education of one's children is a need that is strongly felt in society. . . . [T]hat local control is not only vital to continued public support of the schools, but it is of overriding importance from an educational standpoint as well.³⁵

33. 381 N.W.2d 614, 616 (Wis. Ct. App. 1986), review denied, 386 N.W.2d 500 (Wis. 1986).

34. 384 S.E.2d 598, 604 (Va. 1989).

35. 436 N.W.2d 568 (Wis. 1989) at 580-581.

Yet, given the attempts to broaden the powers of the local school district in the operation of the schools, and the legislation providing what appears to be open ended discretion on the part of the school boards to do with schools as they deem necessary, what are the limits to the pronounced changes and school restructuring efforts? To date, one case has addressed the several concerns raised by *Cohen and Elmore* on the issues of restructuring.

The case of *Fumarolo v. Chicago Board of Education* can be viewed as test case for the attempts of the legislature to redraw the responsibilities and powers of local school boards, and administrators, in attempts to make schools more responsive to the patrons and more viable places of learning.³⁶ Here the legislature, reacting to charges of Chicago being the worst school district in the nation, provided for school reform. The Chicago School Reform Act, adopted in 1989, sought many changes in the operation of the schools, including the establishment of local school councils, subdistrict councils, and affecting the employment of middle management personnel — building principals and subdistrict superintendents.

For instance, in dealing with the local school councils, the act let the Chicago Board of Education retain many general administrative powers and responsibilities, yet altered dramatically the powers and responsibilities over which they had jurisdiction. To place increased authority for individual school decisions at the individual school level, the Act provides for the creation of a local school council for each grammar school and each high school in the Chicago public school system. The local school council is composed of the school principal and 10 elected members. The elected members are: six parents of currently enrolled students who are elected by parents of currently enrolled students, two residents of the attendance area served by the school who are elected by the residents of that area, and two teachers of the school who are elected by the school staff. This was the election schema, except for multiarea districts, district which draw and admit students from more than a single attendance area. In the case of multiarea districts, the community resident to be elected are elected by the parents of currently enrolled students, the principal for the multiarea school, and the school staff. Each local school council elects the principal who will serve at the school for a contract period of four years and may retain the principal for another four-year period when the contract expires. Should a principal not be retained, the local school council will select a new principal. The local school

36. 566 N.E.2d 1283 (Ill. 1990).

council also develops specific performance criteria for its principal and has responsibility for approving the budget plan drawn up and administered by the principal. In addition, the local school council has substantial advisory responsibilities.³⁷ Similar arrangements were made for the subdistrict councils, including the election of members from the local school councils, performance of various advisory functions, election and evaluation for retention the subdistrict superintendent, and election of one of its members to the school board nominating committee.³⁸

While the attempt was made to provide for more input from the community, by granting discretionary control over the budget and hiring/dismissal of the principal, certain challenges were raised as to the very nature of the local school councils and the validity of their make-up. In addition, in reviewing the election procedures, the Illinois Supreme Court had to deal with the question of the power and authority of those boards. The plaintiffs challenged the election procedures as violative of *Reynolds v. Sims* decision, for one person, one vote.³⁹ The plaintiffs argued that the differentiated allocation of votes among parents, community residents, and teachers in local school council elections impermissibly interferes with their fundamental right to have an equal voice in an election involving a governmental matter of general interest, namely the operation of the schools. Under the Act, community residents who reside in a multi-area district and do not have children in attendance at the public schools are unable to vote for any local school council members. Community residents in single district attendance centers who do not have children in attendance in a public schools are entitled to vote for only two members of the council. Parents, however, who have children in the school, are entitled to vote for six members of the council. While it would appear that the schema seemed fair to the patrons in the local school district directly affected (more votes to those with greater concern as they have children in the local school), the question of the equity of the arrangement was raised.

The Illinois Supreme Court considered the one person, one vote requirement and, by necessity, examined the powers granted to the local school council. Herein lies the crux of the matter with regard to delegation of authority and responsibility of the local school council. Was the local school council a body with merely advisory powers and responsible to the Chicago School Board or was it an autonomous

37. *Id.* at 1286-1287.

38. *Id.* at 1287.

39. 377 U.S. 533 (1964).

body that had real power and authority? This determination had to be made by the court before rendering the decision on the voting issue as *Reynolds v. Sims* was found to be applicable in elections of governmental bodies or units which exercise general governmental powers. The trial court had held that the local school councils were special limited-purpose bodies that did not exercise general governmental powers and that their elections, therefore, did not have to comply to *Reynolds v. Sims*. The court held that trial court erred in finding that:

the local school councils did not exercise general governmental powers and its resulting decision to apply the rational basis test, instead of strict scrutiny. The trial court looked to the absence of a power to tax, issue bonds, and similar considerations, in reaching its conclusions, but did not consider the broad and important powers vested in the local school councils and it mistakenly judged the councils to be but advisory bodies.⁴⁰

Further, the court held that:

Considering the whole Act, and the local school councils in particular, we hold that the local school councils are essential units of educational governance, empowered to make important budgetary, educational and administrative decisions regarding the Chicago public school system, and that the statutory scheme which denies or dilutes the vote of certain citizens must therefore be necessary to advance a compelling State interest. The Reform Act creates a unique system in which local school councils play an important role in one of the most critical governmental functions, the providing of public education. The councils do not have such responsibilities as levying taxes and issuing bonds, but the legislature has given them the primary responsibility for school governance and improvement under the Act.⁴¹

Specifically, these responsibilities were for selecting the principal, establishing criteria for the principals performance contract, evaluating the principal and determining the retention or dismissal of the principal; approving the expenditure plan prepared by the principal

40. *Fumarolo*, 566 N.E.2d at 1292.

41. *Id.* at 1295.

in consultation with the local school council; making recommendations concerning textbook selection; approving the school improvement plan; evaluating teacher resources to determine allocation for resources for instruction and school programs; making recommendations concerning appointment of staff to fill vacancies, new positions, and additional positions; and requesting assistance from the board for training of school council members beyond the training in school budgets, educational theory, and personnel selection.⁴²

Thus, the first attempt at meaningful school restructuring saw the courts declaring that the school councils had more than advisory powers. They were in fact vital and viable governing bodies legitimately established by the legislature as evidenced by their assigned responsibilities.

However, because of the very nature of their general governmental powers, duties, and autonomous responsibilities, the Illinois Court struck down the Act as violative of the Fourteenth Amendment's one person, one vote rule. So, what can be seen at this juncture is that the restructuring of schools can lead to constitutionally enforceable extensions of powers to the local school level. As such, it appears that the vision of Cohen for local school district and local school operations can be achieved and that such delegation of powers and authority will stand constitutional challenges if properly framed for constitutional protections of election of members to the councils.

42. *Id.*

CHAPTER III

SCHOOL SITE MANAGEMENT AND SCHOOL RESTRUCTURING ISSUES

There are several major factors that affect the operation of the schools when school site management is implemented or contemplated. These include the role changes that can occur for the professional teaching staff when they are in the decision-making loop; the view that the union/associations take; how states grant power and authority to make change in schools; and the power of the school advisory council and the building administrator to spend funds. This chapter will touch on the legal and educational concerns raised by these factors.

Teachers as Management

One major issue in dealing with restructuring of education comes when the school board/administration is asked, cajoled, or forced, to share power and authority with the professional teaching staff and/or citizens of the local school district. Power distribution within the educational governance structure is a key element in the disputes that arise within restructuring. On the one hand, through state constitutions, the legislature has been granted plenary power over the realm of education. This power includes the responsibility to establish and maintain a system of common schools (either free public or public), raise tax monies, and to govern, control, and regulate the schools and the common school experience. Through delegation of responsibility to the state level agencies (state board and state department of education) and from this level redelegation of responsibility to the local board of education and administration, the state fulfills its functions and duties for education of its citizenry. As reviewed elsewhere, these principles are long settled.¹ Yet, there is a rising notion of the "theory of the firm" and the value of meaningful participatory management. Writing in 1984, Williamson points to the demise of the effectiveness of the traditional models of operating the "firm" and the need for inclusion of "labor, community, suppliers, customers, as well as management and owners" in the process of management of the firm.²

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1. G. Baldwin, *Management Prerogatives and the Scope of Public Sector Bargaining*, in *SCHOOL LAW UPDATE* (1986).
 2. O. Williamson, *Corporate Governance*, 33 *YALE L. J.* 1197 (1984).

This notion is necessitated, according to Williamson, by the very nature of the public operation of the firm (for purposes here, education) and the level of increased stakeholderism and ownership in the affairs of the firm if the firm is to succeed in serving its public/customers well. These sentiments have been echoed, and bolstered, by the analysis of Stone,³ and the research findings of Perline and Poynter⁴ and Lewin⁵ that found increased involvement of labor within the firm's operation, as well as a sound basis for such activity as ownership of the problems and solutions facing the firm increased with effective solutions as a major result. These sentiments have been echoed by Brown,⁶ Barth,⁷ Schlechy,⁸ and Shedd and Bachrach.⁹ Thus, while there is a problem of responsibility, and authority, within education, the notions of shared decision making, shared and participatory management, have been seen to be a positive effect on corporations, and these have potential for public schools.

With the issues raised by Cohen, and the example of Indiana 2000 legislation cited above, there are momentous changes that can occur within the schools. One of the most significant issues is how much authority the local school board and school district have in making the revolutionary changes needed to restructure education. Just how far can these bodies and the local school building personnel may go in restructuring and still fall within the guidelines of the state board of education and the legislature? Also, what impact will these plans have when funding is, at best, minimal? What incentive will drive the local school district personnel to change and become competitive? Can the professional staff of the school and the union/associations become effective partners in the process.

As posited by Kerchner and Mitchell,¹⁰ the very nature of the teachers' union/association has changed in the past twenty years. Over this period of time, unions/associations have moved through two generations of meet and confer and strikes, to an era of good feeling

3. K. V. W. Stone, *Labor and the Corporate Structure: Changing Conceptions and Emerging Possibilities*, 55 U. CHI. L. REV. 73 (1988).

4. M. M. Perline & D. J. Poynter, *The Effects of Worker Participation Plans on Union Views of Managerial Prerogatives*, LAB. L. J. 37 (1989).

5. D. Lewin, *The Future of Employee Involvement/Participation in the United States*, LAB. L. J. 470 (1989).

6. D. J. Brown, *DECENTRALIZATION AND SCHOOL BASED MANAGEMENT* (1990).

7. R. Barth, *IMPROVING SCHOOLS FROM WITHIN: TEACHERS, PARENTS, AND PRINCIPALS CAN MAKE A DIFFERENCE* (1990).

8. P. C. Schlechy, *SCHOOLS FOR THE 21ST CENTURY* (1990).

9. J. B. Shedd & S. Bachrach, *TANGLED HIERARCHIES: TEACHERS AS PROFESSIONALS AND THE MANAGEMENT OF SCHOOLS* (1991).

10. C. T. Kerchner & D. E. Mitchell, *THE CHANGING IDEA OF A TEACHERS' UNION* (1988).

with both sides conducting negotiations in a "normalized" manner, to a third generation within labor/management relations. To these two authors it appears that this third generation will be more professional, with the labor organizations concerning themselves with the resolution of work-role definitions, coming to grips with the organizational culture necessary for success of the organization, and a coming together of both labor and management to resolve the growing crisis in public confidence. This latter part is what, in most instances, drives the demand for, and acquisition of, meaningful participatory management as both sides see that their future depends on their working together to restore the confidence of the public in education. Both labor and management, in this third generation, have become enlightened to the idea that they will not reap the economic and workplace benefits unless the concerns of the public (including the legislature and the state officials) can be assuaged. Thus the acceptance of the professional staff member as a "knowledge worker", necessary for the success of the organization, and as an integral part of the decision-making process is an important prerequisite for successful school management.

This leads to the notion that the professional members of the school staff can, and do, have a level of knowledge and dedication to production of a high quality education for their clientele. Such inclusion of professional staff members in active and responsible decision making will lead to ownership of the problems and opportunities, the challenges and the solutions that must be faced and provided if schools are to "re-form" and restructure in some meaningful fashion. This assumption requires an examination of the changing idea of a teachers' union from the group concerned with economic benefits and welfare of its members to a more professionally responsible group that can have a decided impact on the school district.

The teacher empowerment movement assumes the use of faculty to render decisions concerning the operation and management of the schools. The empowerment movement, combined with school site management, raises additional issues: who is management, what managerial prerogatives do boards retain, and what is the reaction and/or potential reaction to such a change on the administrative staff?

As called for in the participatory management efforts of school site management and other efforts to expand decision making to those professionals within the schools, the question arises if the level of

involvement¹¹, in the day-to-day and long term operation of the individual schools, raises these individuals to the level of management makes them management and not labor? The answer to this question affects the nature and outcome of collective bargaining as well as other personnel issues within the schools and school districts. If the model of public school teacher as professional holds, the *Yeshiva* decision provides guidance.¹² While this discussion has been catalogued elsewhere,¹³ a brief review will establish future discussion of structural reforms in education.

Since the 1978 *Yeshiva* decision, there has been a growing concern for the application of this ruling to public school professional staff members. With the growth of the teacher empowerment movement and the renewed emphasis on school site management, the *Yeshiva* decision is a good place to begin. The Court drew on the private sector decision in *National Labor Relations Board v. Bell Aerospace*, that examined the legislative intent in defining managerial employees. In *Bell*, the Court found that:

...the specific job title of the employees involved is not in itself controlling. Rather, the questions whether particular employees are 'managerial' must be answered in terms of the employee's actual job responsibilities, authority, and relationship to management.¹⁴

Flowing from the *Bell* test of what actually defines a managerial employee, the Court, in *Yeshiva*, ruled that the faculty of the university were, in fact, managerial employees in that their actions met the definition of those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer."¹⁵ The NLRB had argued that the faculty at *Yeshiva* were not managerial employees, as they were not aligned with the university management due to their independent status in using their professional judgment in advising and recommending effective policy decisions for the university. The Court felt otherwise, that:

[T]heir authority in academic matters is absolute. They decide what courses will be offered, when they will be

11. Herrick, *JOINT MANAGEMENT AND EMPLOYEE PARTICIPATION* (1990).

12. *NLRB v. Yeshiva Univ.*, 100 S. Ct. 856 (1978).

13. G. Baldwin, *School Site Management: Some Legal Concerns*. (Paper presented at the annual meeting of the National Organization on Legal Problems in Education, Washington, D.C., (1988).)

14. 94 S. Ct. 1757, 1769 (1974).

15. *Yeshiva*, 100 S. Ct. at 862.

scheduled, and to who they will be taught. They debate and determine teaching methods, grading policies, and matriculation standards. They effectively decide which students will be admitted, retained, and graduated. . . . When one considers the function of a university, it is difficult to imagine decisions more managerial than these. . . . In fact the faculty's professional interests — as applied to governance at a university like Yeshiva — cannot be separated from those of the institution. In such a university, the predominant policy normally is to operate a quality institution of higher learning that will accomplish broadly defined educational goals within the limits of its financial resources. The "business" of a university is education, and its vitality ultimately must depend on academic policies that largely are formulated and generally are implemented by faculty governance decisions. . . . It is clear that Yeshiva and like universities must rely on their faculties to participate in the making and implementation of their policies.¹⁶

Since the *Yeshiva* decision, the First, Second, and Tenth Circuits Courts, and the Appeals Court of Illinois have dealt with similar questions at the collegiate level, with varying results. In *Loretto Heights* and *Cooper Union*, the courts held that given the degree of involvement in managerial type decisions, the faculty members were employees and not managers, and thus, the universities needed to bargain collectively with the appropriate units.¹⁷ In *Boston University Chapter of American Association of University Professors v. National Labor Relations Board*, the court held that due to the level of involvement of the faculty in the decision-making and implementation process of the university like that in *Yeshiva*, the faculty was unquestionably managerial in nature.¹⁸ In *Board of Regents v. Illinois Education Labor Relations Board*, the Illinois Appeals court found that the employees were indeed subject to managerial exclusion through definition of "confidential employees" via the statute that saw such employees defined as those who:

. . . "formulate, determine, and effectuate management policies with regard to labor relations" or those who "have access in the regular course of their duties to information

16. *Id.* at 864-866.

17. *Loretto Heights College v. NLRB*, 742 F.2d 1245 (10th Cir. 1984); *NLRB v. Cooper Union for Advancement of Science*, 783 F.2d 29 (2d Cir. 1986).

18. 835 F.2d 399 (1st Cir. 1987).

relating to the effectuation or review of the employer's collective bargaining policies"" and who are involved in more than a limited fashion, including not only the upper levels of central administration, but also "those in the *day-to-day* operations management."¹⁹ (emphasis added.)

From these decisions it may be deduced that employees may be considered managerial if they effectively make and implement decisions, or have intimate knowledge of the labor relations policies of the employer. If they are only advisory, or if they are outside the day-to-day operations of the institution, then they are employees and excluded from the managerial ranks. But these decisions involved higher education. What direction can they provide for the public schools?

At the outset, it must be remembered that the decision-making and discretionary actions of public schools belong by statute to the local school board. Hence, any council or management/administrative decision that is a policy decision and not merely a day-to-day operation function, must be formally approved by the school board. On the surface, it would appear that faculty members serving on the advisory council, even if their decisions were only rubber-stamped by the formally constituted school board, are still outside the realm of managerial employees. Yet, recent public school cases suggest a potentially different conclusion.

In the following cases, the court was asked to determine whether the secretaries of district and building administrators were confidential employees and thus excluded from the bargaining unit. The Illinois decision previously discussed dealing with day-to-day operations of the organization is relevant to this issue. Hence, the guidelines established by the courts for confidential employees in these cases are, under school site management conditions, foreseeably applicable to members of the professional staff as well. While recognizing that the individuals were not "managerial" employees, the courts held that they were "confidential" employees and as such could be excluded from the bargaining unit. The court in a Missouri case accepted the NLRB position regarding the labor-nexus, stating that:

... the N.L.R.B. has adopted a policy of excluding those "confidential employees with a "labor-nexus", i.e., those

19. 520 N.E.2d 1151 (1978).

20. Missouri Nat'l Educ. Ass'n v. Missouri State Bd. of Mediation, 695 S.W.2d 894 (Mo. 1985); Board of Educ. of Sch. Dist. #230 v. Illinois Educ. Labor Relations Bd., 518 N.E.2d 713 (Ill. App. Ct. 1986).

employees acting in a confidential capacity to persons who formulate, determine, or effectuate management policies in the field of labor relations. . . . [T]he guidelines of the board . . . prove satisfactory in resolving the questions of whether particular employees who have been entrusted with confidential information are, in fact, acting directly or indirectly in the interests of the employer in relation to other employees.²¹

In determining who are confidential employees, the Illinois court relied on the following criteria in establishing such status.

First, emphasis is placed on the allegedly managerial or supervisory employee, such as the high school principals here. These employees must initially be found to "formulate, determine, and effectuate" labor relations policy. All three standards are equally pertinent. Second, should that preliminary inquiry be met, the focus shifts to the particular employee whose inclusion in the bargaining unit is disputed. To be considered confidential, that employee must also, in the regular course of his or her duties, "assist or act in a confidential capacity" to the aforementioned recognized supervisory or managerial employee.²²

Further, the court found an additional measuring stick useful in determining the confidential status of employees.

Known as the "access" test, it provides so long as the employee in question has regular access to "information relating to the effectuation or review of the employer's collective bargaining policies", then that employee may be excluded from the collective-bargaining unit.²³

These criteria, while applied to classified staff members, do provide guidelines for the classification of faculty members on the school advisory councils, depending on the extent and reality of their powers and duties. In conjunction with the definition used by the Michigan court in defining what a supervisor really is, such criteria may well have an effect on the collective bargaining unit and status of employees within that unit. In Michigan, the court was asked to determine whether a gifted and talented coordinator was in fact a supervisor

21. *Missouri Nat'l Educ. Ass'n*, 695 S.W. 2d at 898-899.

22. *Board of Educ. of Sch. Dist. #230*, 518 N.E. 2d at 723.

23. *Id.* at 723.

and thus could be excluded from the bargaining unit and made a managerial employee.²⁴ Referring first to the Labor Management Relations Acts' definition of supervisor, and then with reference to federal court rulings, the Michigan court held that the individual could be so defined. The court reasoned that:

[T]he term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.²⁵

Recognizing that definition of a supervisor, the court went one step further in determining who is a supervisor/managerial employee, stating that:

[T]he federal courts have consistently held that 29 U.S.C. [section] 152(1) is to be read in the disjunctive with the existence of any one of the statutory powers, regardless of the frequency of its exercise, being sufficient to confer supervisory status on the employee, as long as the existence of the power is real rather than theoretic. . . . Said another way, it is not the exercise of authority, but the delegation of authority, which is indicative of the attributes of a "supervisor."²⁶

Thus, it is possible that, depending on the power delegated to the school advisory council, the courts could see a similar arrangement in public schools as they did within *Yeshiva*. The determining factor remains the actual power and authority that is delegated to the school advisory council. Should the principal, as the manager at the individual school level, merely rubber-stamp the decisions of the council for assignment, transfer, or conduct any of the other functions outlined in the Labor Relations Act, then these individuals could well be considered managerial employees. If school boards, using their delegated authority, do grant actual decision-making power to these councils, with the requisite guidelines or merely enact the school site council

24. *Michigan Educ. Ass'n v. Clare-Gladwin Indep. Sch. Dist.*, 396 N.W.2d 538 (Mich. Ct. App. 1986).

25. *Id.* at 540.

26. *Id.* at 541.

decisions/recommendations, then the courts will be faced with a crucial question of who, and to what extent, are the individuals that serve on these councils managerial employees for their term of office?

Unions/Associations and School Site Management

While collective negotiations, the form of the new teachers union, and the role of professionals in decision making are items of interest, there are other signs of concern within the school site management realm that indicate a shifting in support for the efforts at restructuring schools. At the outset of the school reform movement, and school site management in particular, the professional staff in general supported the idea of becoming involved, as professionals, in the decision-making role of the school. As indicated above, while there were some concerns, there was almost universal support on the part of the leadership of both the American Federation of Teachers and the National Education Association for such a change in the governance structure. During the late 1980's, new labor/ management contracts were executed in many districts to formalize these new relationships. Indeed, the Hammond, Indiana school district negotiated a 10-year labor/management agreement that institutionalized the agreements and strategies reached for the continued operation of the school site management plan. The result was that school administrative and professional staff received a respite from the "wars" of negotiations over these issues, allowing the district, and the local schools, to continue to grow in the school site management process. The Dade County Schools and the Rochester City Schools also negotiated agreements to solidify their gains in the areas of school site management.

However, in late 1990 and early 1991, these agreements began to fall apart. The Rochester Public Schools could not reach agreement on the internal workings of the continuation of the school site management plan that had been adopted. While the budget crisis in the state of New York did not help the situation, the issues of most concern dealt with accountability, more power to the schools, and the role of parents within the school site management process. Initially, the district and the union had agreed on these items in return for a career ladder plan and school based planning teams in each building. However, the national demand for success and accountability took its toll and these again became items for negotiations. Of concern was the need for success on the part of the district and the merging of teachers, students, administrators, parents and the community into a

group that would oversee the success of the schools and hold accountable the various parties tied to school success. While many of the professional teaching staff members reacted positively to the suggested new guidelines, it became apparent in September, 1990, that the middle management of the association was uneasy about the state of negotiations.²⁷ The use of new student assessment instruments, and the changes in teacher evaluation from traditional practices became subjects of controversy.

In January, 1991, the Rochester School Board unanimously rejected the negotiated agreement between the board and the teachers' association. The major causes of disapproval were the cost of the agreement (as mentioned the state of New York was in dire financial straits at the time) and the question of whether the teacher evaluation system would achieve the level of accountability desired. The merit pay proposal of tying salary to performance had been weakened and the board sought to increase the accountability demanded by educational reform. The entire episode raised the question of structural reforms, or systemic reforms, as seen by Plank as indicative of meaningful change of the educational system.²⁸ While accountability was a hallmark of the agreement, the issue of time spent on the job was a concern. One clause allowed for the traditional dismissal time for teachers to be eliminated and that teachers would work a professional day to better serve the needs of the students, parents, and community. Also bound up in this was the need for time for meetings as part of the school site decision-making process. While the contract dispute did end with a two-year agreement, some of the accountability and job performance language and reform efforts were lost in the process.

While Rochester Public Schools garnered the majority of headlines during the changing times for school site management, other districts have had to confront these issues as well. The Los Angeles City Schools, which moved quickly to the concept of school site management, saw a rebellion on the part of the building level administrators in March, 1991.²⁹ The concern on the part of the administrators was that they had been left out of the decision loop with regard to the implementation of school site management. In Detroit Public Schools, the start of the school year was delayed due to a teachers

27. A. Bradley, *Dispute Over Pay Roils Contract Talks in Rochester*. Education Week, Sept. 5, 1990, at 8.

28. D. Plank, *Why School Reform Doesn't Change Schools: Political and Organizational Perspectives* in W. L. Boyd & C. T. Kerchner, *THE POLITICS OF EXCELLENCE AND CHOICE IN EDUCATION* (1988).

29. A. Bradley, *Administrators in Los Angeles Form a Bargaining Unit*. Education Week, March 20, 1991, at 1.

strike where the major issue, aside from money, was the implementation of school site management structure that was viewed as being imposed from above. As noted, the recent road to school site management, while not bound up in litigation, has involved some unresolved concerns over educational and policy issues regarding the governance and operation of the schools. These concerns in regard to the school site management process and have resulted in a change of position on the part of the AFT in recent weeks. While school site management opts for local control, accountability and performance based measures of success, it also calls for decentralization of hiring, seniority, and common workrules across the school district. Because these conditions of employment are the heart of the labor organizations activity in schools, local and national union officials are doubting the desirability of changing these rules. Indeed, Al Shanker, President of the AFT, who worked hard in both Hammond and Rochester school districts for the creation of a negotiated agreement that would allow for school site management, has backed off his support for such efforts. Part of the fear of the associations and unions is that such localized efforts would return the schools to the days prior to tenure acts, to situations where the employment of individuals was based, not on performance, but "politics" and graft.

In addition, the time needed by professional staff members on school site advisory councils to debate, discuss, and render decisions, has implications for salary determination that have not been addressed completely. Do school districts release teachers and hire substitutes so that meetings can be held during the school day? How can parent members of these councils who cannot attend except in the evening participate? Should the district pay extra for the professional staff to attend these meetings to be a part of the process, or do school districts merely assume that as professionals, interested in the reform and management of the schools, that the professional staff would attend as part of their professional obligation and without compensation? Furthermore, there is some question as to whether teachers want to be involved in the policy decision making process, the evaluation of peers, the hiring, the budget, the curriculum assessment issues, and implementation of school site management. Indeed, the change of heart seems to be complete as the new thrust points to the improvement of traditional schools and not the support of school site management evidenced in recent years by the AFT.³⁰

30. A. Bradley, *A.F.T. Shifts Emphasis to Focus on Improving Traditional Schools*, Education Week, December 16, 1992, at 1.

While the latter policy matters are not directly tied to legal action between individuals or professional groups and the school boards, they do raise the specter of the potential demise of school site management as originally conceived. Involved are problems that will have to be addressed by educators, legislators, and community members if the thrust of educational reform is to continue. While efforts are continuing in Miami-Dade County, Florida, Jefferson County, Kentucky, Hammond, Indiana, Albuquerque, New Mexico, New York City, and other not so well publicized school districts, the issues of structural educational reform are still on the forefront of change and demands of the taxpaying public. Agreements will have to be reached among all parties concerned over the various educational positions bound up in school site management if it is to have the degree of success that it offers.

Educational Concerns for School Site Management

Several further concerns for the use of school site management in restructuring the schools of America arise out of state legislative attempts to upgrade the schools. These fall in the areas of sincerity of the legislature at changing the traditional schools, the power of the school advisory council and the building administrator in spending funds.

Turning from the issues of educational reform for the state of Indiana, it can be seen that meaningful reform by other state legislatures has become less than supportive in some arenas. While Indiana did waive the various regulations that have traditionally bound schools, such is not always the case. In 1991, the Florida legislature enacted the "Blueprint 2000" for school improvement in that state.³¹ The intent of the legislature was to provide a sound education for all the developing citizens in the state to enable them to grow to satisfying and productive adults. To accomplish this, the legislature mandated that each school in the state conduct a needs assessment of their local school and develop a school improvement plan that was aimed at the success of the school in addressing the goals of (a) readiness to start school, (b) graduation rate and readiness for postsecondary education and employment, (c) student performance, (d) learning environment, (e) school safety and environment, (f) teachers and staff, and (g) adult literacy.³² At the same time, and while other

31. FLA. STAT., §§ 229.591 - 229.594 (Supp. 1990).

32. *Id.* at § 229.591 (3) a - f.

states and school districts had moved to empower the teachers and school advisory committees, the state of Florida reaffirmed that power, control and responsibility would continue to reside in the hands of the local school board and the building principal. This included the "... development or revision and implementation of a school improvement plan. . . ." It would appear that from an educational standpoint, the efforts of reform espoused in the 1980's are being considered with less interest and that legislatures are continuing to maintain control and direction of the schools. Yet, just what roles do the principals play in this process? How much real control and responsibility do they have? Furthermore, the attempts of some states to foster legislation that will support, via competitive, categorical grants, the changes demanded by legislation, cause problems for those within the schools. Both the Florida legislation reviewed and additional Indiana legislation for the "Twenty-First Century Schools Pilot Program" permitted wide variation in how funds were allocated to the individual schools involved in the project, as did the Indiana Performance Based Awards program.³³ While the intent of the legislature was to allow monies to flow directly to the schools for use by the school site advisory committee, and the principal, as deemed necessary for the good of the program, in reality two things occurred. First, in most states there is a legal limit to the amount of "discretionary" money that can be spent by an individual without gaining approval from either the central administration or the school board. In Indiana, the limit is \$500.00 with a monthly accounting of the funds, the uses to which the money was applied, and the justification for the funds.³⁵ Confusion can result from the good intentions for local site decision making, on the one hand, and the need for control of funds and expenditures on the other. The result of this process is that the school board, and the central administration, retain control of the funds and their expenditure, if not in fact, through the process of requisitions, purchase orders, and monthly accounting procedures that tend to dull the enthusiasm of those involved in school site management. Even if the juxtaposed legislation can be resolved for the sake of decision making, there remains the need for an accounting and small business management office in the principal's office to keep track of the expenditures. While the notion of funding at the school

33. *Id.* at § 231.085.

34. IND. CODE ANN. §§ 20-10.1-26-1 to 20-10.1-26.9 (Twenty-First Century Schools Program); IND. CODE ANN. §§ 20-1-1.3-1 to 20-1-1.3-9 (Performance Based Awards Program).

35. IND. CODE ANN. § 21-2-5-1 to 21-2-5-4 (Burns 1990).

level seems attractive on the surface, the personnel needed to operate the system, and the maintenance of the similar staff at the central office level, appears to potentially burden the schools with further layers of bureaucracy that school site management are trying to avoid.

In conclusion, there are many issues, both legal and educational that are bound up in school site management restructuring efforts. However, all of these seem to impact on the office of the building administrator who is charged with the responsibility of bringing school site management to fruition.

CHAPTER IV

ADMINISTRATORS AND RESTRUCTURING EFFORTS

An analysis of the powers that the building principal retains and exercises in the educational reform movement calls for a reconsideration of initial discussion of *Yeshiva* and the role of the employees in the management of the organization. As the various states have moved toward structural reform in education, school site management and beginning teacher mentorships have gained acceptance as means to involve those "knowledge individuals" in the organization as part of the decision-making team. These changes have caused an uneasiness concerning the roles and responsibilities of administrative personnel who had traditionally been responsible for all activities of the schools. Now, with school site management, these individuals perceive a loss of power and control along with increased responsibility and accountability and a lessening of authority. Indeed, the formation of the administrators' union in Los Angeles suggests the frustration felt by these individuals.¹ Likewise, the attempts to solidify the positions and responsibilities of school administrators were seen in the Florida school reform legislation previously reviewed. Questions remain as to just what powers, rights, and prerogatives school administrators have and what challenges have been made to their roles and responsibilities?

Managerial Prerogatives and Management Rights

Although the issues of managerial prerogatives and management rights were discussed elsewhere,² a brief review of the managerial prerogatives of the school board and administration and the effect school site management may have on the "rights" or responsibilities of the building administrator is needed. It is also important to consider concerns of the administrative staff as school site management programs are implemented and effect their powers and responsibilities.

1. A. Bradley, *Administrators in Los Angeles Form a Bargaining Unit*, Education Week, March 20, 1991, at 1.

2. See G. H. Baldwin, *Management Prerogatives and the Scope of Public Sector Bargaining*, in SCHOOL LAW UPDATE (1986).

While it is generally recognized that there are mandatory items, permissive items, procedural items, and managerial items that can, may, or must be negotiated, the rise of school site management adds to the complexity of the collective bargaining process. In addition, the use of school site management also raises questions of the proper delegation of power and authority not only between school board and school councils, but also between the legislature and the school boards.

In various cases, the courts of different jurisdictions have ruled that such items as length of the school year, promotion, curricular decisions, transfer, assignment, and reassignment, minimum number of staff and class size, number of preparations, number of classes, amount of student contact time, and merit pay/master teacher programs are all within the realm of managerial decision making.³

The crux of the issue is whether or not the item that is demanded to be negotiated directly affects the "wages, hours, and terms and conditions" of employment as stipulated in state collective negotiations statutes. The test most often referred to is that found within *IFPTE Local 195 v. State* in which the court stated:

First, a subject is negotiable only if it "intimately and directly affect(s) the work and welfare of the public employee. Second, an item is not negotiable if it has been preempted by statute or regulation. Third, a topic that affects the work and welfare of public employees is negotiable only if it is a matter "on which negotiated agreement would *not* significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy."⁴

This pronouncement provides guidelines for school boards in their powers, duties and responsibilities. Yet, if the legislature is silent, or permits, negotiations of such issues, then the school board may yield

3. *Adamick v. Ferguson-Florissant Sch. Dist.*, 483 S.W.2d 629 (Mo. Ct. App. 1972), *reh'g denied*; *Board of Educ. of Township of N. Bergen v. North Bergen Fed'n of Teachers*, 357 A.2d 302, (1976); *Cary v. Board of Educ. of Adams-Arapahoe Sch. Dist.*, 427 F. Supp. 945 (D. Colo. 1977); *Ridgefield Park Educ. Ass'n v. Ridgefield Park Bd. of Educ.*, 393 A.2d 278 (N.J. 1978); *Hillsborough Classroom Teachers Ass'n v. School Bd. of Hillsborough County*, 423 So. 2d 969 (Fla. Dist. Ct. App. 1983); *Monroe-Woodbury Cent. Sch. Dist. v. Monroe-Woodbury Teachers Ass'n*, 481 N.Y.S.2d 731 (Sup. Ct. 1984); *Rapid City Educ. Ass'n v. Rapid City Area Sch. Dist.*, 376 N.W.2d 562, (S.D. 1985); *United Teachers of Dade County v. Dade County Sch. Bd.*, 500 So. 2d 508 (Fla. 1986).

4. 443 A.2d 187, 191 (N.J. 1982).

to pressures to negotiate these items. As stated in *Hillsborough Classroom Teachers Association v. School Bd. of Hillsborough County*, these

... are policy decisions which are incorporated in the term "standards of service to be offered to the public" which are to be unilaterally set by the public employer ... and thus are not mandatorily bargainable. This decision does not preclude mandatory bargaining as to the impact of the implementation of such decisions ... where appropriate showing of negotiable impact has been made.⁵

Thus, while the procedural aspects of these non-negotiable items must be negotiated, as they are shown to directly affect employees hours, wages and terms and conditions of employment, the policy decisions remain within the realm of school board authority.

... [T]he very foundation of representative democracy would be endangered if decisions of significant matters of governmental policy were left to the process of collective negotiations, where citizen participation is precluded. This Court would be more reluctant to sanction collective agreement on matters which are inherently managerial in nature, because the true managers are the people. Our democratic system demands that governmental bodies retain their accountability to the citizenry.

Our concern is with the very function of government, both state and federal doctrines of substantive due process prohibit delegation of governmental policy-making power to private groups where a serious potential for self-serving action is created thereby. To be constitutionally sustainable, a delegation must be narrowly limited, reasonable, and surrounded with stringent safeguards to protect against the possibility of arbitrary or self-serving action detrimental to third parties or the public good generally.⁶

This will be the situation unless legislatures permit the delegation of these responsibilities. While the courts have been reluctant to permit such divestment, they have recognized that the legislatures may do so. In *Hillsborough*, the court recognized this possibility and indicated that it would also look very carefully at such a delegation.

5. *Hillsborough Classroom Teachers Ass'n*, 423 So. 2d at 970.

6. *Ridgefield Park Educ. Ass'n*, 393 A.2d at 287-288.

The Legislature is of course free to exercise its judgement in determining whether or not a permissive category of negotiations is sound policy. We wish merely to point out that careful consideration of the limits of our democratic system places on delegation of government powers is called for before any such action is taken.⁷

It is necessary to recognize that in the absence of constitutional restrictions, the legislature of any state can allow delegation of any area of responsibility by the school board. Such authority may be exercised within the area of negotiations or within the context of school site management. One area that the *Hillsborough* court raised, that of protection of the citizenry and the public good, has an impact on the use of school site management. As indicated, the use of school site management, in its purest form, calls for elected or appointed citizens to sit on school councils to make and carry out decisions affecting the educational program of the school and the implementation of board policy. It appears, then, that there is a logical step from the retention of managerial prerogatives of the board to the establishment of school site management programs, and the delegation of powers of transfer, assignment, class size, curricular and instructional decisions, promotions, rewards, and the like, that are appropriate to the operation of the individual school under the governance structure established by the school advisory council. As such, and with elected or appointed citizen representation, it would be a short step to pass such responsibilities and powers to the school council and, as an extension of the board, affect changes to the collective negotiations process. Not only would associations challenge this action as improper delegation, but the administrative staff would be placed in the position where they are caught between the competing interests of three groups — board, advisory council, and staff — in the implementation of the various aspects of school site management programs. With this activity on the part of a school board, and the sustaining of that action on the part of the lower court, precedents have been established for the full implementation of school site management and successive challenges to such programs by those directly effected by such changes in school governance.

7. *Id.* at 288-289.

Challenges to School Site Management by Administrators

There remain problems associated with the changes in structure brought on by school site management, and there are challenges to restructuring being raised by school administrators. The previously discussed Chicago School Reform Act represent significant change for the middle management personnel. These changes impacted on the roles, functions, responsibilities and rights of middle management personnel, both school building principals and subdistrict superintendents. The implications of this Act for these individuals has broad reaching impact for all middle management personnel as they establish new guidelines for responsibilities as well as reinforce certain standards of employment and contractual relationships that have existed in the past. What the Illinois court focused on in *Fumarolo*, was the long-term nature of the at-will employment status of principals and other administrative personnel.

At-Will Employment

While it is established law that nonrenewal of a contract that was for a specified and fixed period of time does not violate a property right, or warrant due process protection as seen in *Board of Regents v. Roth*,⁸ *Fumarolo*⁹ would appear to eliminate permanent tenure status for administrators and replaces it with a fixed-term contract. The Act added the possibility of nonrenewal that reinforces the notion of at-will employment. While this condition commonly exist for superintendents and other central office personnel, middle management personnel also face this loss of job security.

An early 1980's case of *Supan v. Michelfeld* dealt with question of at-will status.¹⁰ Here the district administrator was removed during his one year probationary contract. He claimed a violation of property rights as he was coerced to resign without a hearing. The court held here that the probationary period status was the key. At-will employees could be terminated at any time during that period and that at-will employees cannot establish sufficient property interests in the job to warrant a pretermination hearing.

In *Sullivan v. School Board of Pinellas County*, the issue of property interests arose where the assistant superintendent who was dismissed

8. 408 U.S. 564, 92 S. Ct. 2701 (1972).

9. *Fumarolo v. Chicago Bd. of Educ.*, 566 N.W.2d 1283, 1287 (Ill. 1990).

10. 468 N.Y.S.2d 384 (App. Div. 1983).

claimed a violation of his property interests.¹¹ The court held that "to have a constitutionally protected property interest in continued employment, a non-tenured school district employee must have more than a unilateral expectation of it. He or she must, instead, have a legitimate claim of entitlement to it. Furthermore, the court held that the property interest exists only when the individual is appointed and for the duration of that appointment, not beyond. When the individual is not reappointed, there is no property right.

What constitutes a legitimate claim to a position and what leads to a property right? In *Dudulao v. St. Mary's of Nazareth Hospital*, the court set forth certain guidelines that were used in the *Fumarolo* decision.¹² To qualify, there must be a traditional contract requirements in place before the policy statement begins to take effect: (1) There must be a promise of a clear offer; (2) The policy must be disseminated to all employees so that all could reasonably believe an offer/acceptance existed for a contract; and (3) There must be an acceptance of the offer by commencing and or continuing after the policy was effected.

In *Hooks v. Smith*, at-will employment as it affects property interests also was the key issue, as well as the differentiation between a teacher's and an administrator's status.¹³ Here the elementary principal had been demoted and appealed on the basis of a difference in the demotion process for administrators and teachers. The court held that there was a rational basis for different treatment and; school administrators did not have a property interest in continued employment as an administrator. There were no property rights and the individual administrator could be removed by the Board on recommendation of the Superintendent for any reason not offending some right protected by State or federal constitutions or state statute. The role of the school principal differs greatly from that of the teacher as the duties of fiscal management, educational supervisory duties, and carrying out and formulating policy are duties unlike those of the teachers. Therefore, the court opined, there was no need for the same kind of protection for administrators as for teachers.

Lastly, in *Shaffer v. School Board of Martin County*, the court had to deal with the issue of property rights and the change from a continuing contract to one of annual renewal.¹⁴ Here the supervisor had his continuing contract abolished and his status changed to that of an

11. 773 F.2d 1182 (11th Cir. 1985).

12. 505 N.E.2d 314 (Ill. 1986).

13. 781 S.W.2d 512 (Ky. Ct. App. 1989).

14. 543 So. 2d 335 (Fla. Dist. Ct. App. 1989).

annual employee who could, or could not, be renewed in that position. He claimed violation of his property rights. The position of Director of Elementary Instruction had been abolished due to reorganization. His continuing contract allowed for reassignment as part of his continuing contract. The court ruled in favor of the district in that once the individual accepted the new terms and conditions of the annual contract, there were no continuing property interests. Here the court found a new set of employment conditions existed and there were no continuing property rights.

What this points to is the growing concern for middle management personnel to solidify their "rights" to employment. Most recently, this turn of events has seen the contracts of a great number of principals in Chicago non-renewed. Initial indication is that the non-renewals have little to do with performance criteria. This new juncture in administrator employment, coupled with the growing awareness of at-will employment status, has prompted administrators in at least one school district to seek, and gain, collective bargaining rights with the school board. As reported in late spring 1991, such is also the case for administrators in Los Angeles. The implications for such a move, and the effects on restructuring efforts in education, are astronomical.

Specifically, the Chicago School Reform Act states that:

The principal of each school is given responsibility for administering and supervising the educational operation of the school and for developing the school's budget and improvement plan. Under the Act, principals are employed under four-year, renewable performance contracts. The local school council is responsible for determining whether a principals' contract will be renewed. Under the Act, the terms of persons currently serving as principals expire on either June 30, 1990 or June 30, 1991 (the date to be determined by lottery), unless such contract is renewed by the local school council, the employment of such persons as a principal terminates.¹⁵

The principals and subdistrict superintendents challenged this portion of the Act as violative of their permanent tenured status as employees of the district in that the change in their status from tenured permanent employees to that of contracted services for a specific period of time impaired their contracts and deprived them of a

15. *Fumarolo*, 566 N.W. 2d at 1283.

property right without due process of law.¹⁶ While the court had declared the Act unconstitutional, it agreed to examine these issues as they would again come before the court. The Supreme Court of Illinois viewed the plaintiffs arguments as convincing that there was a contractual status between them and the school district, this contract being established both by statutory law and the policies of appointment, probationary status, and permanent status granted by the completion of that probationary period. The court held that an examination of the language of section 34-85 of the statute showed that the tenured principals were entitled to retain their positions; until the age of compulsory retirement during good behavior and efficient service, they could not be dismissed except for cause. The court then went on to state that while the plaintiffs were afforded the stated statutory benefits and protections, there is no indication in the statute or in State law that the legislature intended to create vested contractual rights through enactment of the statute. The court then held that the plaintiffs were entitled to the statutorily created status under section 34-85 on the conditions stated, but that they did not have a contractual right to continued employment.¹⁷ The court went further however, and declared that the plaintiffs had a property right as that right was established via the rules and mutually explicit understandings that support a claim of entitlement to the benefit. There is no doubt that the State law and the reiteration of State law made by the board through guidelines and oral representations created a legitimate expectation of continued employment during good behavior and competent conduct, thereby creating a "property" interest in continued employment. Plaintiffs were, therefore entitled to due process before their permanent tenure was reduced to employment under four-year renewable contracts.¹⁸ While there were no direct processes established to provide for a hearing or opportunity to protest the termination of "permanent" employment status, the legislative process itself created all the procedural safeguards necessary to provide the plaintiffs with due process. In a move similar to that found in the *Garcia v. San Antonio Metropolitan Transit Authority*¹⁹ decision, the court held that the record of the legislative history of the Act indicated that the normal legislative process was followed, with numerous community, expert, and special interest group witnesses involved in the drafting of the legislation. Clearly, enactment of the statute was

16. *Id.* at 1304.

17. *Id.* at 1306.

18. *Id.* at 1307.

19. 469 U.S. 528 (1985).

not arbitrary or irrational and was sufficient to provide the plaintiffs all the necessary procedural safeguards. The court held that although the plaintiffs had a property interest in continued employment, they were not deprived of their property interests without due process of law.²⁰ The plaintiffs argued that the loss of tenured permanent status violated their equal protection rights of the Fourteenth Amendment as teachers retained their protected rights while the principals and subdistrict superintendents lost theirs. The court held that the positions and responsibilities of the two groups were sufficiently different so as to warrant separate treatment. No violations were found of equal protection, except for the one person, one vote issue.

Power and Authority Issues

The issues of at-will employment is only one concern of middle management personnel raised by school site management programs. Other issues fall within the scope of the responsibilities that these individuals have and the "loss" of power and authority, but maintenance of responsibility, over the organization as found in *Schneider v. Ambach*²¹ and *Carnahan v. McWalters*.²²

In *Schneider*, the issue was the reward for supervisory staff, who were considered administrators but who were members of the collective bargaining unit.²³ As administrators they could not receive the reward under the New York State Excellence in Teaching program. Where the individuals were teachers, but also department heads, administrative assistants, and supervisors, they would be included in the reward process. This is crucial problem. If there is no payoff for the administrative staff and the salary differences between teachers and middle management personnel are lessening, there is no incentive to move to administrative ranks and/or work diligently for educational reform.

As initially observed, the issue of the powers that the building principal retains and exercises in the educational reform movement points to the previous discussion of *Yeshiva* and the role of the employees in the management of the organization. These twin concerns met in *Carnahan v. McWalters*.²⁴ Following the tenets of school site management, the Rochester Board of Education entered into a collective

20. *Id.* at 1307.

21. 526 N.Y.S.2d 857 (App. Div. 1988).

22. 536 N.Y.S.2d 345 (App. Div. 1988) (Memorandum decision).

23. *Schneider*, 526 N.Y.S. 2d at 857.

24. *Carnahan*, 536 N.Y.S. 2d at 345.

negotiations agreement with the Rochester Teachers Association that provided for the implementation of a mentor teacher-internship program [Peer Assistance and Review Program (PAR)]. As part of the agreement, the mentor teacher evaluated the performance of the beginning/intern teacher. The mentor, and PAR panel members, made the determination of the worthiness of the intern for full licensure status. Carnahan, and the Administrators and Supervisor's Association, alleged that the provisions of the PAR program were outside the bounds of statutory provisions for administrators and their responsibilities. Specifically, the concerns were voiced as to the lack of administrative or supervisory certification on the part of the mentors, the lack of evaluation of the mentors in their mentoring role by the principals, and that the administrator's right to evaluate and review the interns is usurped and diminished by requiring evaluation reports to be channeled through the PAR panel.²⁵ The New York court assumed that the harmful effect that the Principal's Association claimed was the sharing of evaluation responsibilities. Having made that assumption, the court found that while there was a change, it was not a harmful one. Nothing in the law prohibited the principal from evaluating the intern, and the statutes did not confer or protect any right of administrators to be the sole evaluators of teacher performance. Further, the court noted that the role of the mentor shall not be construed as limiting or supplanting the authority of school administrators or supervisors to supervise or evaluate the performance of the intern\teachers.²⁶ Thus, the court held that the program was one of legitimate interest and was within the bounds of the district and association to negotiate.

While the school administrative personnel have been given the authority and responsibility for the operation and success of the schools, the efforts at school site management, empowerment of teachers, local school site councils with authority to hire and dismiss, all cause legal, educational and morale problems. A group that for so long held to be the cornerstone of the education establishment and reified in the effective school literature as the needed element of leadership for restructured and reformed schools, these individuals continue to see their power and authority slip away. Aside from the legal aspects of the dismissal, and resultant legal action as seen in *Fumarolo*, the educational implications of the diminution of authority with increased responsibility and accountability will add to, not subtract from, the problems facing educational reform.

25. *Id.* at 346.

26. *Id.* at 346.

To assure success of the schools, the needs of this group of individuals long held to be the "persons in the middle" will have to be addressed. Furthermore, in the preparation programs for educational administrators, the educational leadership issues of building teams and collaborative educational organizations must be reexamined. Shared leadership and conflict resolution skills will be key elements to the further success of these individuals and ultimately the success of school reform efforts.

CHAPTER V

PROFESSIONAL STAFF AND RESTRUCTURING EFFORTS

Beyond *Yeshiva* and its progeny and the notion of restructuring schools, are the structural changes that have been the hallmark of the educational reform movement. In an effort to determine why school reform does not change schools, Plank examined the types of educational reform that were instituted in the 1980's.¹ He found that states initiated four types of reforms: additive, external, regulatory, and structural. Of the four types, the external and regulatory were the most prominent in all states, with additive a distant third and structural reforms last. The external reforms were characterized by pieces of legislation that dealt with pre-service teacher testing, certification changes, education school standards (PPST, higher gpa), new high school graduation requirements, exit tests for public school students, and new admission standards for colleges. Regulatory reforms included such items as longer school days and years, fewer extracurricular activities, more stress on basic skills, and statewide assessment efforts. Additive reforms included items dealing with new revenues for education, increased salaries across the board, pre-school initiatives, mandatory kindergarten, computer literacy, and aid for prospective teachers. Structural reforms, those Plank considers necessary to bring about lasting reform, included career ladders, merit pay schemes, smaller classes, in-service teacher tests, vouchers and tax credits, and choice. These these last two structural reforms have led to court challenges and have upset the personnel and collective negotiations positions assumed over a long period of time. In addition, as school districts and state legislatures move to restructured schools and school site management, issues of teacher evaluation, merit pay, accountability and quality of instruction and instructors, and currency of the professional staff become key points in educational reform.

1. D. Plank, *Why School Reform Doesn't Change Schools: Political and Organizational Perspectives*, in W. L. Boyd, & C. T. Kerchner, *THE POLITICS OF EXCELLENCE AND CHOICE IN EDUCATION* (1988).

Evaluation Criteria and Procedures

Concomitant with school reform and restructuring was a demand for more stringent evaluation of the teaching profession. The responses included changes in evaluation criteria and procedures and in the collective negotiations process that have been challenged in the courts. In *Bethlehem Township Board of Education v. Bethlehem Township Education Association*,² the New Jersey State Board of Education adopted more stringent regulations that required local boards to establish criteria and procedures for evaluating tenured teachers. The ground rules for the criteria were based on the desire

... to promote professional excellence and improve the skills of teaching staff members. . . to improve student learning and growth. . . and provide a basis for the review of performance of tenured teaching staff members.³

These goals changed the criteria, the instruments and the data used to establish "professional excellence." The Bethlehem Township Board of Education implemented its plans without consultation or negotiation. The Association challenged this unilateral action. The Board claimed that they did not have to negotiate as it was a state mandate and hence non-negotiable. The Supreme Court of New Jersey upheld the implementation of the regulations by the state board and the need for local school district compliance. These were not matters of negotiability. However, within the new evaluation system, certain procedures for the implementation of the process were negotiable, as long as they did not interfere with management prerogative including the establishment of criteria using standardized test scores for indications of student growth and effectiveness of the teacher.

In *Wethersfield Board of Education v. Connecticut State Board of Labor Relations*,⁴ the local school board appealed the Labor Relations Board ruling that it was mandatorily required to negotiate evaluation criteria and procedures. The state legislature had enacted the Teacher Evaluation Act mandating that local school boards revise and implement evaluation plans in line with new state requirements. The crux of the matter was the existing contract that had been negotiated with clauses concerning the evaluation standards and procedures, specifically the need for prior consultation before evaluation, unlimited grievances over evaluations, and use of only certificated

2. 449 A.2d 1254 (N.J. 1982).

3. *Id.* at 1256.

4. 519 A.2d 41 (Conn. 1986).

administrative personnel in the evaluation process. When the new contract was negotiated, the school board refused to include this item in discussion holding that the state mandate took this beyond the realm of mandatory negotiations. The Labor Board ruled that these were negotiable items and the school board appealed. The General Assembly Act sought to increase efforts for career incentives and teacher evaluation which linked quality of instruction to these incentives and rewarded on the basis of the teacher evaluation. The Supreme Court held that the issue of teacher evaluation, as per the state statutes, were non-mandatorily negotiable except where "by mutual consent" the local board and the association chose to establish a joint committee to meet and confer on the issues, criteria, and procedures.

The third case dealing with evaluation criteria and procedures comes from *Overseas Education Association v. Federal Labor Relations Authority*.⁵ This case began with the Authority's ruling that the Department of Defense Dependent Schools (D.O.D.D.S) did not have to negotiate provisions of the work conditions dealing with evaluation of staff. In particular, the items at issue were use of student test results to evaluate employee performance, monitoring of employees by clandestine surveillance, and limitation on the number of direct observations by supervisors. While the rationale provided by the Association seemed to be sound, especially in light of the use of standardized test scores where no control had been offered of the nature of the learner, the D.C. Circuit held that D.O.D.D.S. did not have to negotiate these provisions, as they were managerial prerogatives. While the items were framed in procedural terms, and therefore would have been mandatorily bargainable, the court held that they were, in fact, management's rights to make substantive employment decisions and the right to determine what information to gather and use in that process was beyond the scope of negotiability.

Evaluation has also dealt with increase classroom and instructional standards. One of the issues within effective schools research lies in the area of increased classroom standards by which teachers would be evaluated. Following the findings of the effective schools movement, local school boards, attempted to enact such standards and then hold teachers accountable.

One recent case in this area involved the involuntary transfer of a teacher from her assigned duties for failing to maintain adequate standards in the classroom. In *Monroe-Woodbury Central School*

5. 872 F.2d 1032 (D.C. Cir. 1988).

District v. Monroe-Woodbury Teachers Association, the arbitrator held for the Association and ordered the teacher returned to the original assignment.⁶ On appeal, the school district prevailed and the Association appealed. Here, the court held that the setting of "adequate" classroom standards of behavior and maintenance of order and discipline, and the monitoring of that activity, was within the public policy purview of the local school board and could not be bargained away. Again, the court held that the curricular and instructional responsibilities, and the policies flowing naturally from these were matters of managerial prerogative. With the exception of the procedures for transfer or dismissal, these decisions help open the door for greater involvement by local boards to fulfill their obligations for effective schooling as noted in the various educational reform reports.

A second decision, *Overseas Education Association v. Federal Labor Relations Authority*, adds to the confusion of additional standards for proper instruction.⁷ The Department of Defense Dependent Schools Office had promulgated changes in the work rules and responsibilities for the teaching staff in D.O.D.D.S. schools. These changes included a lengthening of the school day, cutting planning time for teachers during the day, hiring of substitute teachers would be reduced and teachers not on duty would cover additional classes, there was an increase in the workload of the compensatory education teachers, and the D.O.D.D.S. extended the duties of the teaching staff to include lunch room and recess supervision duties. The O.E.A. challenged these changes, as they affected the terms and working conditions of the teachers. The D.O.D.D.S. officials held that there was no known effect shown as to these items on the teachers, and therefore they should be allowed to maintain these items as a management prerogative. The circuit court holding for the Association ruled that each of these items did effect the working conditions of the staff, and that while it was appropriate for the teaching staff to work more directly with the students, and for longer periods of time, these were mandatorily negotiable items. Furthermore, the court reasoned that the changes offered by D.O.D.D.S. did have a direct effect on the employees and these could and should be negotiated.

Merit Pay and Career Ladders

One of the most contentious areas for personnel and labor relations during the educational reform movement was in the area of

6. 481 N.Y.S.2d 731 (App. Div. 1984).

7. 876 F.2d 960 (D.C. Cir. 1989).

incentives for teachers. The incentive packages, be they merit pay or career ladders, were structural reforms that say local boards of education respond to the demands for better instruction and more quality staff within the schools.

Providing incentives to increase a teacher's gross salary was the focus of the dispute in *Weatherford v. Martin*.⁸ The association had negotiated a contract that did not include of additional salary incentives. The board established the policy of additional salary incentives, placed it within the Teacher's Handbook, considered by longstanding practice to be the official school policy record, and distributed it to all staff. The local school board's incentive plan was voluntary and open to all teachers. All parties agreed that they had knowledge of the incentive program and recognized that participation was voluntary. The court held that because the program was conducted with the complete knowledge of the teachers and that it was voluntary and above and beyond the negotiated contract, it was a managerial policy decision and did not fall within the scope of negotiations. The court noted that the policy, an effort by the local school board to reward excellence in teaching and encourage quality instruction, fell within the purview of managerial policy. As such, the board retained control of the program and could distribute the additional salary incentives based on the procedures set forth in the policy handbook.

Similarly, "meritorious service" and the attendant reward for such activities were issues in *North Plainfield Education Association v. North Plainfield Board of Education*.⁹ Two teachers sought salary credit, and movement on the salary schedule when they completed their master's degrees while on sabbatical leave. They were moved to the master's track, but not granted a year's salary credit. This particular movement was not contained in the negotiated agreement between the district and association. The association grieved the loss of salary and the board won at the arbitrator and state board of education level. On appeal, the superior court held for the association and the board appealed to the supreme court. The supreme court held for the local board as they had the prerogative to establish the salary level based on the state statutory provision that:

A teacher's entitlement to a salary increase . . . is subject to denial by a school board . . . for inefficiency or other good cause. . . . That is, the annual increment is in the nature of a reward for meritorious service to the school district.

8. 418 So. 2d 777 (Miss. 1982).

9. 476 A.2d 1245 (N.J. 1984).

Evaluation of that service is a management prerogative essential to the discharge of the duties of the school board. The determination of an annual increment after evaluation by a school board serves the dual statutory objectives of affording teachers economic security and of encouraging quality in performance.¹⁰

As the teachers had been rewarded for their professional development by movement to the master's level on the salary schedule, and had been paid for their year's sabbatical, the court found that it was within the prerogative of the local board to determine the quality of service that the sabbatical had performed for the district and to reward accordingly. This decision raises the question of whether all salary increases could be based on evaluation of the staff member and must be so established even in the absence of a merit plan?

Merit pay and career ladder plans, including Master Teacher Plans, came under close scrutiny in two instances in Florida.¹¹ In both these cases the union challenged Florida Master Teacher Plan and the Dade County School Board's use of that plan as an incentive program for teachers. The challenge was based on the belief that this should be a mandatorily negotiable item, as it effected salary and wages of the members of the union. In a 4 - 2 decision, the court held that the annual award provided by the program was not a "wage" in the meaning of the collective negotiations statutes and therefore was not a legitimate part of the mandatory bargaining items. There remains the question of whether it could be a permissive item of negotiations, but even this does not seem likely given the legislative intent of the program. The purpose of the Florida Master Teacher program was to recognize and reward superior teaching ability and provide an economic incentive for teachers to continue in the classroom. The Florida statute conferred a \$3000.00 grant/award to teachers who voluntarily satisfied certain statutory requirements to be considered superior. The Union claimed that the twice yearly payments of \$1500 to the successful individuals amounted to a violation of the collective bargaining statute that called for bargaining on hours, wages, and terms and conditions of employment. Further, the union claimed that the tactics used here amounted to "union busting" by the state and the local district. The courts held that if that were the intent of the program, and if the statute bypassed the employees'

10. *Id.* at 1248.

11. *United Teachers of Dade County v. Dade County Sch. Bd.*, 472 So. 2d 1269 (Fla. Dist. Ct. App. 1985); *United Teachers of Dade County v. Dade County Sch. Bd.*, 500 So. 2d 508 (Fla. 1986).

bargaining rights, then that would be a violation of the collective bargaining statute. However, the court found that the payment was an award for which teachers applied voluntarily. Further, the award was not a factor in future promotions nor was it allowed to accrue as part of the teachers salary paid via the collective negotiations agreement.

New York State also saw battles fought over its Excellence in Teaching Program that offered a merit type award to superior teachers. In *Schneider v. Ambach*, the New York Appeals Court addressed the questions of applicability of the statute to professionals in the schools and BOCES units, and the claim that the rules and regulations established by the Commissioner violated the constitutional rights of supervisors, department heads, and administrators as they were excluded from the awards.¹² As to the first claim, the court held that while administrators and supervisors might be considered "teachers" in some sense of the word, the statute did not specify that (a) they should be included and (b) that the statute, by pinpointing the "set aside" of funds for first, second and third year teachers, the legislature had demonstrated its intent that the statute apply to "teachers" in the traditional sense of the word. The legislation was enacted to redress salary and economic conditions of a group of individuals that did not include superintendents, and hence the court extended this to include administrators.

On the question of alleged violation of the constitutional rights of the administrators, the court relied on the rational basis test when considering the Fourteenth Amendment challenges. The question came over the status of non full-time educators, including department heads and supervisors who taught classes each day in addition to their administrative duties. The question was whether they could, and should, be considered for the award. The rationale offered by the local districts fell to the make-up of the collective bargaining unit, where only full-time teachers were included. On that basis, the Commissioner and the local districts eliminated those not within the unit from the EIT awards. The appeals court ruled that there was no rational basis for that action, and that supervisors and department heads, who taught classes during the school day, would be eligible. While successful from the awards standpoint, such action will force local school boards to rethink the role that they have middle level, and first line, management play within the local district. This rethinking will cause a great deal of hardship as positions are either eliminated from the district or further excluded from the bargaining

12. 526 N.Y.S.2d 857 (App. Div. 1988).

unit and greater expense if they are made full-time administrative personnel.

In the case of *City School District of Elmira v. New York State Public Employment Relations Board*,¹³ the issues dealing with the New York State Excellence in Teaching Award were similar to those raised earlier dealing with the Florida Master Teacher Plan.¹⁴ The case resulted from the vote by the Elmira School Board not to apply for these funds (since the program was voluntary) because it would have increased their social security premiums, retirement assessments, and other "fringe benefits" to a level they were not willing to absorb. Furthermore, the board reasoned that the five-year contract included substantial increases to the salaries of teachers beyond what would have accrued from the EIT program. The Association challenged this reasoning with the belief that the board was dealing with "wages" and hence it should be bargainable. They filed a grievance and the Administrative Law Judge and the Public Employment Relations Board held that the use of the funds in the Excellence and Teaching Apportionment Program fell in the category of wages and was therefore mandatorily bargainable. The supreme court held that the subject was beyond the scope of the Taylor law and that the Elmira School Board was within its bounds when it did not apply for these funds. The court held that the language of the negotiations statutes did confer mandatory negotiations over the distribution of the funds. While the Legislature could have expanded the scope of negotiations to include negotiations over the application for these funds, it chose not to do so. On appeal¹⁵, the appellate court sustained the supreme court ruling. The court explicitly pointed to the legislature's consideration that distribution of such funds, following receipt from the state, would be mandatory and separate from the regular collective negotiations bargaining conducted by local school districts and the employee representatives. However, the court held that such legislative mandatory negotiations after receipt were not applicable in the local district's decision to apply for the funds in the first place.

State Certification Regulations and Teacher Testing

One means to increase the quality of the teaching staff is through increased standards for licensure. While states have implemented pro-

13. 536 N.Y.S.2d 214 (App. Div. 1988).

14. *United Teachers of Dade County v. Dade County Sch. Bd.*, 500 So. 2d 508 (Fla. 1986).

15. *City Sch. Dist. of Elmira v. New York State Pub. Employment Relations Bd.*, 547 N.Y.S.2d 820 (N.Y. 1989).

grams at the pre-service level, including increased grade point averages, use of the Pre-Professional Test of Skills (PPST) scores, and the National Teacher Examination scores, these have been phased in and have not been part of the licensure requirements of those currently holding certificates. As the structural reforms of the 1980's were implemented, state legislatures found that it was politically important to insure the quality of instruction and administration on the part of those in the field. To do so raised the question of the validity and purpose of the teaching or administrative certificate. The assertion was made that the certificate was a "contract" between the state and the individual that, once received, could not be taken away except for some grievous error on the part of the individual.

The Texas legislature enacted a statute in 1984 mandating testing of in-service professionals for continued service in the Texas public schools. Passing this test was a condition for continuation as a teacher or administrator. If a person failed, they would have one more opportunity to pass the test and retain the certificate and their position in the public schools. Separate tests were to be developed and administered for primary and secondary teachers and administrators. Emergency certificates could be issued on the basis of establishment of need.

The Texas State Teachers Association claimed these actions were violative of the state constitutional rights of their members as a retroactive law and an impairment of the obligation of contracts.¹⁶ The Texas Court of Appeals disagreed holding that the certificate granted to teachers and administrators upon completion of the initial requirements was not a contract, and hence could not be impaired. The certificate was merely a license to practice, not a guarantee of a job. Further, the license was subject to the "state's continuing power of regulation."¹⁷ While the Association recognized the right of the state to change certification requirements, these had to be conducted in a reasonable and necessary manner for the public good and serve an important public purpose. The court held that the actions of the state legislature were for the public good and were a reasonable extension of the state's plenary power over the control of education.

The second objection of the Association was the means by which the test was implemented. Initially, competence in subject matter and literacy (ability to read and write) were the elements of the test.

16. *Texas State Teachers Ass'n v. State*, 711 S.W.2d 421 (Tex. Ct. App. 1986), *reh'g denied* (1986).

17. *Id.* at 424.

Failure to pass appropriations in the first year led the legislature to pass only funding for a literacy test during the second year of the program. The Association claimed that this was a two-part test and not as established by the statute. In addition, they contended that the legislature did not intend that a person would lose their job over failure to pass the literacy part of the test. The court reviewed the legislation and agreed that it appeared to be a two-part examination process. However, the court further indicated that the statutes permitted termination or nonrenewal of certificates who fail to perform satisfactorily on at least one examination, thus pointing to the possibility of two examinations in the original legislation. As such, and in light of the failure of the state to adequately fund but one portion of the test, the court held that the testing could be completed in stages and that the constitutionality of the testing program was upheld.

The Texas case raises the specter of changes in certification laws especially as it deals with licenses that were "valid for life." It has been a continuing challenge for school administrators and local school boards to keep professional staff current in the field. This has been seen in efforts to entice or force teachers and administrators to gain additional credit for movement on the salary schedule, and by changes in the licensing requirements of those who did not have "permanent" licenses after a specified date. However, with the growth of hard research evidence on what constitutes effective teaching, and with the growing "graying" of the public school employee, part of the restructuring of education of various states has taken on the efforts to mandate continued education for all staff, including holders of "life" certificates.

There are two recent instances where states have taken such action. First, in *Reback v. Rhode Island Board of Regents*,¹⁸ the challenge was brought against state officials who enacted and mandated such changes. Here, the state board enacted a regulation that voided all certificates, after a specified date, and forced teachers to renew their certificates in accordance with the new and additional educational requirements. Reback had met the requirements for a five-year renewal under the old regulations. However, with the changes, she would lose her license after only three years and without opportunity to fulfill the new requirements. Furthermore, as all teachers similarly situated would lose employment as mandated by state statute (regarding the non-employment of uncertificated personnel in any school receiving full or part state reimbursement) the issue became one of

18. 560 A.2d 357 (R.I. 1989).

impairment of contracts. The supreme court sustained the lower court's finding that the Board of Regents regulation was too expansive. While the court posited that the Board of Regents could enforce such regulations prospectively (setting the date at the next renewal period), they could not impose them retroactively. While the certificate is not a contract, the certificate creates a property right that allows the individual to practice the profession and to seek employment. Without these certificates, the individuals lose their employment opportunities and this, the court held, was unfair and unreasonable.

On the same issue, the courts of a neighboring state came up with different results in *Connecticut Education Association v. Tirozzi*.¹⁹ Prior to the 1986 legislative session, the state had a two-tiered certificate system in place. The newly certificated individual was granted a provisional teaching certificate valid for no more than three-years. Following that probationary period, teachers became eligible for a standard teaching certificate valid for life and revocable only for cause as provided by the state statutes. During the 1986 legislature session, the General Assembly passed "An Act Concerning Education Enhancement."²⁰ The state legislature effectively removed the standard and professional or "life" certificates from the lexicon of the state of Connecticut. These certificates were replaced with a three-tiered approach. The newly graduated teacher would be issued an "initial educator certificate," followed by a "provisional educator certificate" and, upon completing necessary requirements, would be granted a "professional educator certificate." Over 30,000 teachers holding the standard license had to surrender these by July 1, 1989 in exchange for a professional educator certificate. The new professional educator certificate required each teacher to complete nine additional CEU's, or their equivalent, each five-year period for renewal of the certificate. The cost of the CEU's were, by law, underwritten by the state and local/regional boards of education.

The Association challenged the enactment charging that such action had violated the due process and substantive rights of professional educators in the state of Connecticut. Specifically, the Association claimed that the teachers had a property interest in the old certificate that the act deprived them of without due process of law.

The Supreme Court of Connecticut rejected this contention and upheld the General Assembly's actions. They pointed out that no

19. 553 A.2d 1065 (Conn. 1989).

20. 1988 CONN. ACTS No. 88-273.

property right was lost, as the teachers still had a valid certificate and could practice their profession, except that they now had to complete the CEU's to renew their certificate. Unlike Reback, no one lost their job, as there was a longer "phase-in" period. On the issue of deprivation of due process of law, the court held that the General Assembly had held hearings, received input from the Association and Federation, and that the political process of influencing the legislature had been afforded the plaintiffs. As such, and given the tenets of *Garcia v. San Antonio Metropolitan Transit Authority*,²¹ the court upheld the constitutionality of the statute.

In dealing with the substantive issue, the court held that the teachers had not shown the loss of a fundamental right, that there was a legitimate state purpose (increase the quality of the professional staff in schools) to be served, and no heavy burden had been unduly placed on the plaintiffs. The court also reviewed the plenary powers of the General Assembly and found that such action as taken here was well within the bounds of the legislative body in performing their functions for the state of Connecticut.

While these are changes that affect the professional lives of teachers and administrators, they are meant to be structural reforms that work for the good of the education process for children.

21. *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985).

CHAPTER VI

PARENT AND STUDENT RIGHTS AND SCHOOL CHOICE

The restructuring schools has led to a resurgence of the concepts of school choice and the use of vouchers that would permit parents to send their children to schools that offer the form of education that the parents desire. This alternative advocated by the the Reagan and Bush administrations and former Secretary of Education, William Bennett, suggests the need to examine parent and student rights, the legal basis for these rights, and how they relate to school choice, private school, and home schooling.

Parent and Student Rights

What are the rights of parents in the education of their children? The question of control, interest, and responsibility in the education of students has been much litigated; its theme has flowed through decisions concerning private schooling, home schooling, curricular decisions, and student rights to an appropriate education.

An initial court decision that dealt with the issue of parental rights and responsibility for the education of their child and challenged the authority of a local school board over issues of curriculum and attendance, was *State ex rel. Kelley v. Ferguson*.¹ Here the parents of the child objected to the demand by the school board that she take a course in domestic science. The parents objected to the class, as it was conducted outside of the primary school facility, took more than a half day away from other instruction, and thereby caused her to fall behind in her other studies. The school district's response was that domestic science was a required course in the curriculum and that the parents and the child were in violation of the school board policy. As a result of the dispute between the two parties, the school board expelled the child from school. The question raised by the court was who maintains control over the education of the child — the parent or the school board? In answering the question, the court looked at the longer lasting interests of the two parties and found for the par-

1. 144 N.W. 1039 (Neb. 1914).

ents. The court concluded that the teachers' interest in the child's course of studies, while well meaning, was fleeting. The court gave greater weight to the parents' knowledge of their child and the parents' more lasting concern for the growth, development, and education of the child. The court stated:

[T]he right of the parent, therefore to determine what studies his child shall pursue is paramount to that of the trustees or teacher. Schools are to provide by the public in which prescribed branches are taught, which are free to all within the district between certain ages. But no pupil attending the school can be compelled to study any prescribed branch against the protest of the parent that the child shall not study such branch, and any rule or regulation that requires the pupil to continue such studies is arbitrary and unreasonable.²

The court concluded that:

The state is more and more taking hold of the private affairs of individuals and requiring that they conduct their business affairs honestly and with due regard to for the public good. All this is commendable and must receive the sanction of every good citizen. But in this age of agitation, such as the world has never known before, we want to be careful lest we carry the doctrine of governmental paternalism too far, for, after all is said and done, the prime factor in our scheme of government is the American home. . . .³

Thus, the stage was set for the battles over who controls the education of children and students today.

Further evidence of support for parental rights in the education of their children came in the decision of *Meyer v. Nebraska*.⁴ Here, the Supreme Court dealt with the issue of the right of a private school teacher to teach a foreign language to children in that school in direct conflict with the state statute that prohibited teaching a modern foreign language to children below the eighth grade and the right of parents who sent their child to that school. In dealing with these issues, the Court acknowledged the primacy of education of children and the need to practically educate students in schools conducted by qualified teachers. Yet, the Court also raised the questions of the teachers'

2. *Id.* at 1042.

3. *Id.* at 1044.

4. 262 U.S. 390 (1923).

right to teach, and the right of parents to engage teachers to instruct their children. The Court held for teacher and the parents of children in private schools to determine the curriculum beyond the minimums set by the state. The Court further held that the right of the parents to have their children taught specific courses of study within that private school could not be denied them. The decision also forced the courts and the education establishment to re-examine the differences and possibilities of private education and the rights of parents to send their children to specific schools that matched the educational desires they had for their children.

In the North Carolina decision *In re Reassignment of Hayes*,⁵ the courts further elaborated on the issues while recognizing the authority of the board to assign students to particular schools. The student and her parents challenged the assignment to a different high school during her junior year. She had taken Latin during her freshman year, was a member of the school band, and generally received high grades in school. She expected to go to college and to be admitted, needed two years of a foreign language or three years of Latin. Because the school to which she was to be assigned did not offer Latin or band, her chances to attend the college of her choice were jeopardized. The dispute arose during the civil rights movement of the sixties and there were charges of racial motivation on the part of the school board. In transferring the student from one high school to another, the board alleged that its purpose was balancing attendance zones. The Supreme Court of North Carolina held for the parents and the student. The court indicated that while the efforts to balance attendance zones by the school district were admirable, to deny equal access to educational programs and opportunities desired by students and their parents was a violation of the students right to an education. Such action on the part of the board also denied the parents the right to oversee the child's education and to assure access to the desired programs for their child. Again, the court held that the parents' and student's right superceded the interests of the school district. Because the district was involved in desegregation, the court found that the programs in the high schools were not equal and needed to be made so. Had they been equal, the court reasoned that the statute providing for education in the state, and the assignment of students in particular, placed all emphasis on the welfare of the child and not the desires of the school or school personnel. Again, the parents' lasting interest in the child's education was supported.

5. 135 S.E.2d 645 (N.C. 1964).

Parental Choice: Home Schooling

If there is the general sense that the parents' desires and the child's welfare are of paramount concern, then to what lengths can the parents go to provide for the education of their children? More germane, what are the limits of the state and local school districts and what can the states and local school districts do to foster such choices for the parents and children? When parents become dissatisfied with the schooling of their children, or with specific individuals, there typically has been little recourse beyond meeting with local school officials. Yet, the home school movement and the private school movement have both traditionally given options to parents. While these have been little used in the past, they seem to be growing in importance and used today.

Home schooling might well be traced to the origins of this country and efforts, historically, of parents and siblings to "teach" children the rudiments needed for success in adult life. This tradition continues into the 20th century. Although the court decisions are conflicting, those discussed illustrate the issues that are involved and the findings are relevant for schooling today as a form of parental choice. The first case for consideration is that of *Wisconsin v. Yoder*.⁶ While this case is usually considered under the rubric of religion, there are school choice overtones that should be examined. The issue was that of non-school attendance, by parental choice, past the eighth grade for children of the old order Amish tradition. This was in direct violation of the school attendance laws for the state of Wisconsin. The argument was that the Amish tradition called for basic rudiments of education in terms of reading, writing, and mathematics necessary for the "simple life" of the Amish community. However, beyond the eighth grade, the school life of students became competitive and hence detrimental to the development of the sense of community demanded by the Amish order. In addition, the Amish contended that exposure to ideas and precepts of traditional high school curricula were beyond the scope and need of their children and that instruction by the Amish community in areas needed to perpetuate the Amish community were more beneficial. These learnings would be best conducted under the leadership and control of the members of the Amish community. The state, as indicated, saw the point differently. However, the Supreme Court in 1972, held for the Amish and their right to withdraw their children from the public schools. The

6. 406 U.S. 205 (1972).

nexus of the decision was between the long tradition of religious and personal beliefs about education and the sense of community within the Amish order. The Court pointed to over 300 years of sustained growth and development of the Amish. The Court further noted that the Amish did not stop the education of their children at the eighth grade, but continued educating and training their children and young people in the history, philosophy, arts, craftsmanship, and skills needed by the community and in such a manner as to provide productive citizens for the Amish community and the state of Wisconsin. The Courts' reasoning here appears to parallel the demands and desires of many states to have students graduate from high school and lead productive and useful lives.

While the *Yoder* decision is not directly linked to what has become "traditional" home schooling, it does point to the right of the parent, with solid justification, to control the education of the child. Yet, the state has a concern for the continued development of its children and youth to become solid and productive citizens. If there is an alternative to public education for parents, other than sending their children to a private school, home schooling may be the choice for parents. Questions remain as to how can this be accomplished in today's society, and what are the standards that must be upheld for an educated citizenry?

Part of the answer lies within the New Jersey decision on home schooling of *State v. Massa*.⁷ The issue in this case was the desire on the part of the mother to have her sixth grade daughter educated at home in order that she could have the "pleasure of seeing her daughter's mind develop" and the dissatisfaction with the public school that wasted so much of the children's time. The state contended that her demand was inappropriate on several counts. First, that the quality of education received by the children would suffer, and second, that the instruction would not be equivalent to that provided by the public schools. The parents were not certificated as teachers, however, the state and local school district base arguments on that point. The court thus had to deal with the issue of what constituted an equivalent education and whether the requirements had been met by the parents. The state contended that the time schedule and materials used in instructing Barbara (the student) were not equivalent to those of the public schools. However, the parents presented extensive evidence that there was in fact a consistent time schedule for regular instruction during the "school day" that was followed day after day

7. 231 A.2d 252 (Sup. Ct. 1967).

and week after week, unlike the findings in *Stephens v. Bongart*, that the materials used by the Messa's were plentiful, varied, and appropriate and included traditional textbooks as well as other current instructional materials.⁸ Mrs. Massa also produced a curriculum that matched the sixth grade curriculum of the local school. The court also found evidence of more individualized instruction, review, and reteaching of areas in which Barbara had trouble, instruction and attention that was not available in the public schools. The question of the equivalency was also raised by the local schools in reference to where Barbara stood in relation to her peers in terms of her level of knowledge of typical sixth-grade subjects. On this point, the Massa's produced standardized test results, administered by an independent testing agency, that showed Barbara to be considerably above the national median in all areas except arithmetic. With regards to "extras" that schools provide in the areas of fine arts, the Massa's provided evidence that Barbara was actively involved in music and ballet lessons, and that her father taught her art, as he had done in various schools. On the basis of equivalent education from an academic standpoint, the parents had demonstrated a conscientious effort to provide a sound basic education that met Barbara's specific, and her parents' general, needs and desires.

Additionally, the local school superintendent argued that social adjustment and behavior needed to be equivalent to that of sixth grade students who attended public schools. In response, the mother provided evidence of Barbara's social development, acceptance of her peers in her neighborhood and at other gatherings of students her age, and testimony by previous teachers and neighbors that the entire family was "normal" and well adjusted and accepted within the community. The court held for the parents on this count as well. Moreover, the court went on to indicate that within the context of the New Jersey statute, equivalent education does not, and cannot, include social development. To do so, the court reasoned, would be to deny the fact that social development can occur in situations other than in groups or in public schools. This would deny the very nature of, and is contradictory to, the statute that provides for equivalent education be provided to students in places other than at public schools.

If the court's definition of equivalent education is accepted elsewhere it appears that home schooling can provide a legal alternative for parents. Indeed, since the *Massa* decision, a number of states

8. 189 A. 131 (N.J. Misc. 1937)

have accepted the use of home instruction as an alternative to public school education. However, such allowances have not been without challenge. A number of states allow parents to teach their children alone, and not be certificated. Other states demand that home tutors (apparently other than parents) either be certified or pass an examination measuring the extent of their knowledge and capabilities. Of the 33 states that have enacted home schooling statutes, 28 of these require regular standardized testing of the home school students to assure mastery of basic subjects. Where home schooling today seems to create problems for parents is when they fail to comply with the state regulations regarding providing evidence of academic growth, or the parents have used home schooling as subterfuge to thwart the efforts of the state to provide compulsory education for all children as in *Marzenac v. North Judson-San Pierre School Corporation*.⁹

The use of testing, in compliance with statewide competency testing requirements has become a hallmark of the restructuring efforts of states to bolster the level of education of those completing schooling. To that end, Arkansas and Kentucky have provided that while students may be educated at home, they must comply with the statewide testing program and achieve at the minimal level for their particular grade. Failure to do so, the courts have held, will permit the state to cause the students to be returned to public, private, or parochial schools for remedial instruction and assurance of a minimal level of education (*Murphy v. Arkansas*; *Vandiver v. Hardin County Board of Education*).¹⁰ Thus, in all instances, the courts have required the parents to provide evidence that their home school efforts are meeting the basic demands of the state for an self-sufficient, educated citizenry. Yet, home schooling is a choice that parents can make, that is consistent with the restructuring efforts that provide parents with greater decision making for their children's education.

Parental Choice: Public and Nonpublic Schools

Since the beginnings of this country, private education has been a force that has both aided and confounded public schools and public policy. From the decisions of *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary* through *Cochran*, *Everson*, *Lemon*, *Meek*, to *Wolman v. Walter*, the courts and states have grappled with how to accommodate private and parochial education and how to assure the

9. 614 F. Supp. 152 (N.D. Ind. 1985), *aff'd*, 798 F.2d 230 (7th Cir. 1986).

10. 852 F.2d 1039 (8th Cir. 1988); See also *Vandiver v. Hardin County Bd. of Educ.*, 925 F.2d 927 (6th Cir. 1991).

welfare including education of all children within constitutional limitations."¹¹ Nowhere has this battle been waged more fervently than in the decisions of *Mueller v. Allen*, *Davis v. Grover*, and *Luthens v. Bair* all dealing with the provision of school choice involving nonpublic schools and funding to support that effort.¹²

The school choice issue arose in the early 1980's with the calls by members of the executive branch of the federal government to support parents' decisions as to where to send their children to school. The works of Chubb and Moe seemed to reinforce the argument for choice raised by the Reagan and Bush administrations.¹³ As a political reaction to that call, a number of states began instituting choice plans. In many instances the plans called for merely choice options for parents across public school district attendance zones within the same school district. More radical plans called for the development of tuition tax credits, the use of vouchers, and other financial incentives to parents to assist them in sending their children to private schools, both sectarian and nonsectarian. With these plans came attendant lawsuits that followed the same logic used to annul such efforts in Pennsylvania, Rhode Island, and Ohio during the 1970's. In the earlier 1970's cases, the issues revolved around providing funds to assist parents who wished to send their children to nonpublic schools. Part of the rationale was that it was cheaper to do that than to provide monies to rebuild the public schools to the level needed to absorb those students who were attending private and parochial schools. The challenges during the 1970's alleged violation of the establishment clause and the Fourteenth Amendment due process rights of the taxpaying citizens. The latter argument cited the use of public funds for private gain. During the 1970's, such efforts involving tuition tax credits were struck down by the courts while upholding the use of public funds to provide textbooks, transportation, to school diagnostic services, testing services, and remedial programs that directly benefitted the child.¹⁴ In the 1980's, with the calls for restructuring, renewal for schools, for competition as a means to improve school quality, efforts were again proposed that were aimed

11. 268 U.S. 510 (1925); *Cochran v. Louisiana State Bd. of Educ.*, 281 U.S. 370 (1930); *Everson v. Board of Educ. of Ewing Township*, 330 U.S. 1 (1947); *Lemon v. Kurtzman*, 403 U.S. 602 (1972); *Meek v. Pittenger*, 421 U.S. 349 (1975); 433 U.S. 229 (1977).

12. 463 U.S. 388 (1983); 480 N.W.2d 460 (Wis. 1992); 788 F. Supp. 1032 (S.D. Iowa 1992).

13. J. Chubb & T. Moe, *POLITICS, MARKETS, AND AMERICA'S SCHOOLS* (1990).

14. *Wolman*, 433 U.S. 229 (1977).

at providing funds for parents to send their children to schools of their choice.¹⁵ The funds were in the form of tax deductions on the state tax form for expenses incurred in providing tuition, textbooks and transportation for their children to elementary and secondary schools. The tax law provided that such deductions were available to anyone who paid state income tax and had children in elementary and secondary schools. No distinction was made between the public and private schools. The statute was challenged in *Mueller v. Allen* where the court was asked to determine whether such deductions taken by parents of children in private and parochial schools constituted a violation of the establishment clause of the First Amendment.¹⁶ In particular, the court was asked to apply the *Lemon* tripartite test to the statute to determine whether the state, by allowing parents of these children to deduct such costs, was in fact pursuing a sectarian purpose and advancing the sectarian interests of the private schools. Deductible expenses included not only the cost of but also secular instructional materials and equipment, as well as "tennis shoes and sweatsuits for physical education; camera rental fees for photography classes; ice skate rental fees paid to schools for calculators for mathematics classes; home economic materials, metal and wood shop materials, supplies for art classes; rentals fees for musical instruments; and costs of pencils and notebooks required for classes."¹⁷ The deduction that was allowed began, in the 1982 legislation, at \$500.00 maximum for each elementary student in the household and \$700.00 maximum for each secondary student in the household. All three levels of the federal court system upheld the law as constitutional and not violative of the establishment clause. Following earlier decisions of *Committee for Public Education v. Regan*; *Wolman v. Walter*; and *Lemon v. Kurtzman*, the Supreme Court held that the *Lemon* test had been successfully met and there was no violation in allowing such tax deductions.¹⁸ The turning point for the decision appears to be the availability of such deductions for elementary and secondary expenses for all taxpayers in the state of Minnesota, whereas tuition deductions and reimbursements in earlier cases were directed only at the parents of private and parochial school students. The political impact of the decision was that the state government as long as it was evenhanded, could provide strategies to

15. M. Friedman, *FREE TO CHOOSE* (1980).

16. 463 U.S. 388 (1983).

17. *Id.* at n.2 at 391.

18. 444 U.S. 646 (1980); 433 U.S. 229 (1977); 403 U.S. 602 (1972).

relieve the financial burden faced by taxpayers with children in private schools. The decision reinforced arguments of advocates choice plans as to the constitutionality of such arrangements and their goal to have tuition tax deduction/credit plans, adopted at the federal level. To date, such efforts at the federal level have not been successful. However, such is not the case at the state level.

Following the lead of Minnesota, the Iowa legislature in 1987 revised the state income tax law and permitted tax deduction/credit for the cost of tuition and textbooks incurred by parents in sending their children to elementary and secondary schools - either public or private/sectarian schools. During the 1989-90 school year, more than 10% of the children in school in Iowa attended accredited non-public schools, predominantly Catholic, but also including Lutheran, Baptist, Christian Reformed, Seventh-day Adventists, Fundamental Christian, and Mennonite schools. The law applied to parents who had an adjusted gross income of less than \$45,000 with dependents in accredited schools in Iowa. The taxpayer could claim an additional itemized deduction that could not exceed \$1,000 per dependent. If the taxpayer took the standard deduction, the tax credit would equal 5% of the first \$1,000 paid for tuition and textbooks for each dependent in an accredited school. In March, 1992, the United States District Court held that the tax credit/deduction did not violate the establishment clause of the First Amendment. Again, the main rationale of the court was that the tax credit/deduction was available to all taxpayers in the state with children in accredited schools.¹⁹ In its establishment clause analysis, the court found that the excessive entanglement portion of the *Lemon* test was not violated. The issue of entanglement had been raised out of the need to monitor the influence of religious dogma in the schools and the use of secular instructional materials for some sectarian purposes. No such entanglement was found by the courts.

Beyond the usual political and emotional arguments, as well as the constitutional debates, over the use of choice and tax credits/deductions/vouchers for non-public schools, and the claim that increased competition that would serve to spur the public schools to greater heights, there are other concerns over the use of choice for the education of children.²⁰ One such challenge flows from the "freedom of choice plans" proposed and in some instances implemented during the 1950's and 1960's as states sought to avoid desegregation orders.

19. *Luthens v. Bair*, 788 F. Supp. 1032 (S.D. Iowa, 1992).

20. D. Kearns & D. Doyle, *WINNING THE BRAIN RACE: A BOLD PLAN TO MAKE OUR SCHOOLS COMPETITIVE* (1991).

Such plans were held to be unconstitutional during that time period and equality of educational opportunity became a norm. For example, the freedom of choice plan of the County School Board of New Kent County, Virginia,²¹ allowed all students within the schools to attend the school that they chose without restrictions. The plan was challenged and in its decision, the Supreme Court of the United States held that the plan offered by the school board was unacceptable as a means to achieve a unitary school system. The Court did not rule out freedom of choice plans entirely, but examined the effect such plans had in achieving racial equality in public schools. In this particular instance, the court found evidence that while the plan did provide choice, the effect was negligible as the vast majority of both black and white students chose to remain in their original school due to social and economic factors.

Recently freedom-of-choice concept re-emerged in conjunction with the issues of parental and student rights. Two states, Massachusetts and Wisconsin enacted choice plans during the past three years with varying success. During the 1991 legislative session, Massachusetts enacted a choice bill that permitted students to attend the participating school district of their choice with the state aid following the student. With the opening of the school year for 1991-1992, it quickly became apparent that the law, while of good intentions, had been hastily contrived and enacted. School districts with more prestige became objects of massive infusions of students and monies. Those districts that lost students, and the state aid, struggled to make ends meet with employee salaries and fixed costs that they could no longer fund. In essence, what happened was that the choice plan based on the free market notions of Friedman, created untenable fiscal conditions in the state. The choice option also tended to benefit most the white, middle class students and parents who had long been funding their child's education in other districts by paying the cost themselves. Thus the law tended to create a dual class system as the state aid was not sufficient to cover the cost of tuition transfers to move students of low incomes to the wealthier districts. The resulting conditions were somewhat similar to those experienced in the south during the desegregation movement. Of note was the recent announcement that the state of Massachusetts, already in dire financial difficulty, could not afford the cost of bailing out the poorer districts. This led to the Massachusetts legislature to repeal the law.²²

21. *Green v. Board of Educ. of New Kent County*, 391 U.S. 430 (1968).

22. K. Diegmuehler, *Mass. Education Panel Votes to Repeal Choice Law*. *Education Week*, May 13, 1992, at 17.

Similar choice plans both publicly and privately funded, were offered in other states. Of note particularly is the Milwaukee Parental Choice Program (MPCP) that was aimed at providing choice of schools for low income Milwaukee families. Enacted in 1990, the legislation provided that students in grades K - 12 who reside in a first class city may attend, at no charge to the student, any nonsectarian private school located in that city, provided that (1) the families income does not exceed 175% of the poverty level, (2) that the pupil was not attending that school the previous year, (3) the private school had to participate within the program, and (4) the private school does not discriminate in any way under any program or activity receiving federal financial assistance, and (5) the private school meets all health and safety requirements of the state of Wisconsin. In response to the legislation a lawsuit was filed involving parents, private schools, the Wisconsin Association of School District Administrators, the Wisconsin Education Association, the NAACP, Milwaukee branch of the Association of Wisconsin School Administrators, the Milwaukee Teachers Education Association, the Wisconsin Congress of Parents and Teachers, the Milwaukee Administrators & Supervisors Council, and the Wisconsin Federation of Teachers.²³ For each participating student, approximately \$2,500 of state aid was diverted from the Milwaukee Public Schools to the participating private school. The challenges came in three parts: the private/local legislation clause, the uniformity clause, and the public purpose doctrine all of the Wisconsin state constitution. The private/local legislation clause was to prevent the use of multi-subject bills by which specific pieces of legislation would be buried and not fully considered. A thorough review of the legislative history of the MPCP plan failed to yield any evidence that the legislation was buried in the multi-subject bill so that it would pass without due singular consideration. On that basis, the MPCP plan was declared to be constitutional. As to the second challenge, the uniformity clause, the concern was a violation of the Wisconsin constitution that calls for the legislature to "provide by law for the establishment of district schools which shall be as nearly uniform as practicable; and such school shall be free and without charge for tuition to all children between the ages of 4 and 20 years."²⁴ The concern here was whether the private schools were "district schools" in the meaning of the constitution. If they were, then did they follow the same character of instruction that was demanded for uniform

23. *Davis*, 480 N.W.2d 280 (Wis. 1992).

24. *Id.* at 473.

education. The plaintiffs argued that they did not meet those requirements thus the legislation violated the constitution. The court accepted the arguments that the private schools were not district schools; however because at no time did the legislation deny any student the opportunity to attend a district school if they so desired and even if the student had chosen to attend a private school, and then left, they could return without impunity to the district school of their choice.²⁵ Thus, the the uniformity clause was not violated by the MCPC.

The last challenge came in the form of the public purpose doctrine because public funds were used for education of students at private schools without adequate supervision and control. The court found that these concerns were overcome by the legislation. First, there was supervision of the private schools via the accreditation process of the state, and the requirements of the state upon private schools to meet and fulfill certain educational requirements. Second, the court reasoned that control is fashioned within the program by way of parental choice. The parent would exercise control by enrolling their student in a specific school that met their specific educational goals and objectives. If the private school did not fulfill the desires of the parent and student, then the process of free enterprise and competition would dictate either the demand for change on the part of the school or the parents would move the child to a new school. As to the charge of using public monies for private purposes, the court reasoned that anyone meeting the statutory conditions was eligible and that the \$2.5 million allocated for the program was an inconsequential sum in light of the \$6.4 billion spent on education in the state of Wisconsin, representing .04 percent of the total spent on public education. The court also noted that this was an experimental program in concert with the other educational innovative programs established by the state of Wisconsin.

The *Davis* case does raise some interesting notions concerning choice and how it might be provided for students at the poverty end of the economic spectrum. Unlike the freedom of choice plan in New Kent County and the Massachusetts program which had effect of greater benefit for the more affluent members of society, or the Minnesota plan that seems to decrease the financial burden of parents whose children were already attending private school and now had the opportunity to reduce their costs, the beneficiaries this program were those students who generally have no choice in their edu-

25. *Id.* at 474.

cation due to their socio-economic status. The question that arises is to what extent such choice plans will have a positive impact on the education of these students. Furthermore, there are those middle class students whose families are above the poverty line, yet do not have the funds personally or through a tax credit plan to attend the school of their choice. Are conditions being set for an enclave of perpetually disadvantaged students? The pronouncements of Chubb and Moe, and Friedman concerning the use of competition and choice to improve the schools, and the rhetoric of those aspiring politicians, may well confound the issue of real restructuring and basis systemic reform of education that is needed for all children. The decisions to date indicate that the courts may well be politically attuned to the desires and mood swings of the country and have, and may well continue, to support such effort of choice.

CHAPTER VII

CONCLUSIONS AND IMPLICATIONS

The purpose of this monograph was to examine some of the more important legal and educational issues that are intertwined with the educational reform movement. The investigation focused on those issues related to school site management and the newer school restructuring efforts. This closing chapter contains a discussion of the conclusions and implications that can be drawn.

Conclusions

1. Because education is a state function, controlled by the legislature, this body must either expressly delegate or implicitly permit the local school board and professionals to develop school site management plans. This empowerment is not as difficult as it might seem, even within existing statutes and constitutional provisions. Designating what will be taught, the number of days or hours of instruction, and the textbook selection process can be retained by the legislature while delegating to the local school board the authority to manage, organize and structure the educational program. Yet, there are key concerns that the state legislatures must address.

Among these concerns are collective negotiations laws that call for bargaining in regard to instructional matters at the local level. As long as the legislation on school reform permits local resolution of the labor/management issues this is no problem. However, if such legislation is perceived to encroach on the decision-making power of the local board and professional staff, in terms of specifying instructional content, methodology, and evaluation criteria, such efforts may well cause disputes that may stifle or retard progress toward educational reform.

Second, is the concern over finance. In order for school site management programs to work, changes in the funding formulas to accommodate specific and unusual staffing and school arrangements must be made. The traditional funding arrangements used by some states will have to be revised to allow for these new restructuring efforts.

2. At the local school board level, the various issues stemming from collective negotiations, delegation of authority and responsibility, managerial prerogatives and whether the professional staff

becomes management bring problems to be resolved. The local school board may not, except by express permission and specific directions from the state legislature, delegate unlimited authority to run the school to either the administrators or to school site councils. This restriction pertains to policy decisions relative to hiring, assignment and transfer, and dismissal. If local school councils are a part of the restructuring process and the council is to function as intended, the local board must recognize the professional knowledge, and expertise and the desires of its members. While the board need not accept the recommendations *carte blanche* without appropriate study and examination, it must permit the council to have meaningful input into the decision-making process without giving up its statutory policy-making authority. For the board to abrogate its legal responsibility would only invite legal challenges to the board's actions as such challenges are likely to be successful.

The local school board, in moving toward school site management, also faces the prospect of decentralization of the decision-making process, the need to improve the communication between the various levels of the organization and the adoption of procedures to insure the professional safety and integrity of the individual employees. At the same time, the local board, through policy decisions, can establish the overall goals for the district, and through delegation of administrative responsibility, permit the local schools to determine, through school site management, the way to implement the policy. Management prerogatives are not given up, merely the implementation process that repeatedly the courts have said must be negotiated anyway. By permitting the implementation process to be developed at the local building level, building personnel may be held accountable and changes accepted.

Whether the new roles performed by the professional staff, as part of the school site management process, cause them to become management employees under the principles found in *Yeshiva* remains an unanswered question. One possible distinction is that colleges and universities differ from the public elementary and secondary schools which are agents of the state and charged with the fulfillment of state school policy. The governing board's discretionary powers may not be delegated. Since professional employees including the teaching staff may be assigned only ministerial powers to carry out the policy, their designation as "management" seems farfetched. In other words, the retention by the local school board of the final authority in decision making, even with the consensus agreement of the local building staff or the *carte blanche* acceptance of the implementation process

dures for district policy, appears to reserve the designation as management to that body.

3. Using school site management for control of the schools raises questions as to the role of the community — parents and non-parents — in the process of educational decision making. Because the board is the elected representative of the people, does not the inclusion of other people from the community on school site management councils open the door to conflict? While on the surface this would appear to be the case, in practice the school board is still legally "in charge" of the educational enterprise as seen in the previously discussed *New York* case, where the board sustained a successful challenge to its decision-making power from a parent's group.¹ The caveat is not that the school advisory council will challenge the board's operation of the school, it is that the parents and other lay members on the council will be overshadowed by the professionals or will be handpicked, thus eliminating their effectiveness as voices of the community, or as is happening in many school site management endeavors, the parents are not included at all. Should any of these scenarios occur, the local board becomes even more important as the arbiters of local disputes and representatives of the community in school reform efforts.

Implications

Public officials and local community members, including patrons, parents and students, are demanding that schools change. School site management, restructuring schools, open competition via vouchers, tuition tax credits, open enrollment plans, are all efforts to make schools effective for the 21st century. The legal implications of such attempts are seen in the power struggles between local school officials and the state legislatures who are enacting various pieces of legislation to cause schools to change by their own initiatives rather than to force them to accept some pre-designed plan. Part of the legislatures' motivation results from fiscal conditions of the states and the assumptions that money can be saved if schools reorganize, and economic development would be enhanced if only the schools would reform and produce a quality product.

The problem with these particular supporting bases for school reform is that as individual state legislatures enact such legislation, there is no consistent thread or one particular path to follow to bring

1. *Parents Ass'n of Pub. Sch. 222 K v. Community Sch. Bd.*, 319 N.Y.S.2d 864 (Sup. Ct. 1971).

about change. A second problem is that with the legislative enactments, school personnel and school boards fear that local control of the schools will be lost and attention to the demands of the local conditions for education will not exist. School site management appears to be one of the better ways in which to permit schools to reform and meet the demands of the clientele they serve. Through the use of school site management the schools would be restructured to allow for decision making at the local school level. Those professionals who are part of the process of educating the students and working with the parents, would have direct links and participation in the decision-making process. These individuals who have the knowledge of curriculum, child growth and development, teaching and learning strategies, and the knowledge of what works for the education of students would have a vital part in that process.

Yet, the local school boards may fear the loss of control and authority when changes are mandated by the legislature similarly, local building administrators may be threatened when the local boards demand that school site management be implemented. Furthermore, both the school board and the school administrators may resist teachers becoming a part of that decision-making process. If such developments occur, then school site management and other restructuring efforts will fail.

It is clear then that local school authorities — boards or administrators — must recognize that the professional members of their staff can, and do, have a superior level of knowledge and dedication to produce high quality education for their students. H. I. Ansoff² pointed out the need for creative solutions which include the knowledge workers within the organization. Such inclusion of professional staff members, in active and responsible decision making, will lead to ownership of the problems and opportunities, the challenges and the solutions that must be faced and provided if schools are to “re-form” and restructure the bureaucratic organization in some meaningful fashion.

The previous discussion described the role of the classroom teachers, other school professionals, and community members in the decision-making process. When reorganization is fully implemented, these individuals will have much more authority and responsibility than ever before. Several implications come from this assumption of authority and responsibility. First, there are the legal challenges to the involvement such individuals in the decision-making process. Second, there is the changing role of professional educators and the

2. H.I. Ansoff, *STRATEGIC MANAGEMENT* (1979).

effect that such a change has on their status within the employee/management positions. Third, there are reactions by school administrators such as their efforts to foster administrative union development and thereby retain their authority and control.

Beyond these implications are others including the lack of training and preparation for decision making and conflict resolution on the part of parents and community members, professional staff, and administrators. With the exception of the works by Marburger and Clark, little material is being produced that gives specific direction for the training and skill building needed to complete needs assessments, establish goals and visions, fund and staff schools, establish curriculum, and the myriad of other issues that are dealt with in school site management efforts.³ Training programs must be established, individuals prepared, and communities sensitized to the changes that are brought about by school site management.

Secondly professional staffs must have preparation to assume leadership roles within restructured schools and be willing to assume that responsibility. It follows that teachers and other school professionals will have to develop skills of leadership along with pedagogical skills needed for teaching. In this sense no longer can the school building principal be considered the sole leader of the school; it must now be recognized that any individual school has many leaders, both formal and informal. Consequently teacher preparation programs that fail to prepare individuals as "teacher-leaders" will retard the implementation of school site management and the other school restructuring efforts.

School site management requires changes in the relationships of school professionals to each other and with the community. One example cited was the changing nature of the teachers' union. School professionals will have to be just that, professionals. They can no longer insist on the shortened school day, the three months off in the summer, and time off to "grade papers" and attend classes. The current situation in the teachers' workplace will have to change. With school site management and the other restructuring efforts, school professionals will have to work longer hours and longer years to accomplish all that is demanded of them. If they should choose to continue along the present course, then the ideas of vouchers, tuition tax credit, open enrollment and school choice will gain support and potentially replace the current public school structure.

3. C. Marburger, *One School at a Time*, in *SCHOOL BASED MANAGEMENT: A PROCESS FOR CHANGE* (1985); T.A. Clark, *INTRODUCING SCHOOL SITE MANAGEMENT: A FRAMEWORK FOR CITIZEN INVOLVEMENT. A HANDBOOK FOR PARENTS* (1979).

On the other hand, if school personnel rise to the occasion and react as professionals, then the reward system must change. The cries of the public, the legislators and the business communities have been that teachers are paid what they are worth. After all, they only work nine months and have extended vacations within that time period. Should school restructuring and school site management be adopted and implemented, longer school days and school years will demand a different pay structure that will require an increase in school funding at both the local and state level. The question that is asked here, and not answered, is to what extent will local and state governing authorities support these reforms that entail additional costs? Neither the preparation issue previously mentioned nor increased spending has been adequately addressed by reform advocates.

Other aspects of school restructuring and school site management are the changes designed to upgrade and assure the competency of the professional staff of schools. As noted in Chapter 5, among attempts by state legislatures to reform education are changes in certification standards, increases in teacher testing both during and after completion of preparation programs, mandated the use of outcomes/competency based education, enactment of merit pay plans and career ladders program, and the renewed emphasis on teacher evaluation. These approaches to upgrading the workforce also entail increased costs. Furthermore, an unintended consequence of these efforts may be the creation of problems in attracting and retaining members of the diverse populations needed to staff within the schools. Failure to deal adequately with this problem perpetuates the inequities described by Kozol in *Savage Inequalities*,⁴ thereby creating a two or three-tiered system of education contrary to the historic path of common schools and goal of education for all.

One interesting point in the Texas case is the indication by the court that teaching is a profession as declared by the state legislature.⁵ Increased professionalism of the school personnel assumes the establishment of a common knowledge base. With that base and certification tied to mastery of that body of knowledge, there may be developing the basis for a successful educational malpractice suits where teachers or administrators fail to follow prescribed and proscribed practice in given situations.

The implications of school restructuring and school site management that involve school choice, voucher systems, and home school-

4. J. Kozol, *SAVAGE INEQUALITIES* (1991).

5. *Texas State Teachers Ass'n v. State*, 711 S.W.2d 421 (Tex. Ct. App. 1986), *reh'g denied* (1986).

ing are many. Besides contributing to the establishment of tiered, privileged and underprivileged system of education in the United States as previously suggested, other concerns exist. Quite predictably are the legal challenges to the funding of private and sectarian schools. Other establishment clause challenges will result from the involvement of local and state officials with these schools in regard to certification, accreditation, and the other aspects of state-mandated programs. Other states may face problems similar those noted in Massachusetts, where the best of intentions (creating competition and hence better schools) led to the need for increased funding in mid-year as the loss of students in some schools left the school officials with no students, no state funds, and massive expenditures due to contractual arrangements that had to be honored. The use of home schooling, which may well be a viable option, can be excessively burdensome for school officials who are charged with the responsibility of monitoring to assure that the children educated in this manner received an education equivalent to that of the public schools.

Overriding all these concerns appears to be the effect implementation of school site management and other school restructuring efforts will have on the balance of power between the various parties and their roles and responsibilities. What can be hoped for is that these efforts will result in a cooperative or synergistic approach to management and operation of schools in a new era of professionalism as described by *Kerchner and Mitchell*.⁶ There remain questions of educational and managerial prerogatives and the roles and functions of building principals who now see their roles and responsibilities lessened and shared. The sense of powerlessness that once held by teachers now seems to be shared middle management and first line supervision personnel. Among negative effects may be problems in the recruitment of qualified and capable individuals. At the same time, teachers unions by necessity are changing their primary focus from economic benefits and welfare of their members, to the improvement of the student's education.

The efforts of restructuring schools and structural reforms in education are only in the beginning stages and will continue well into the future. Education has become an important political issue at both the state and national levels and coupled with the push for economic development that state and local officials have embraced, will result new efforts in the direction of change and the distribution of power and authority.

6. C. T. Kerchner & D. E. Mitchell, *THE CHANGING IDEA OF A TEACHERS' UNION* (1988).

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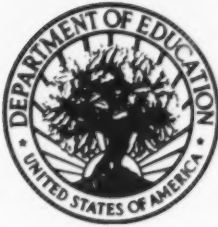
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95 ISBN-156534-055-8



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